

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE SIXTH APPELLATE DISTRICT

G. MITCHELL KIRK; AND CALIFORNIA
RIFLE & PISTOL ASSOCIATION,
INCORPORATED,

Case No. H048745

PLAINTIFFS AND APPELLANTS,

V.

CITY OF MORGAN HILL; MORGAN
HILL CHIEF OF POLICE DAVID SWING,
IN HIS OFFICIAL CAPACITY; MORGAN
HILL CITY CLERK IRMA TORREZ, IN
HER OFFICIAL CAPACITY; AND DOES
1-10,

DEFENDANTS AND RESPONDENTS.

**APPELLANTS' APPENDIX
VOLUME IV OF XI
(Pages 608 to 907 of 2813)**

Superior Court of California, County of Santa Clara
Case No. 19CV346360
Honorable Judge Peter H. Kirwan

C. D. Michel – SBN 144258
Anna M. Barvir – SBN 268728
Tiffany D. Cheuvront – SBN 317144
Konstadinos T. Moros – SBN 306610
MICHEL & ASSOCIATES, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
Telephone: 562-216-4444
Email: abarvir@michellawyers.com

Counsel for Plaintiffs-Appellants

INDEX TO APPELLANTS' APPENDIX

CHRONOLOGICAL

DATE	DOCUMENT	PAGE
-------------	-----------------	-------------

VOLUME I

04/15/2019	Complaint for Declaratory and Injunctive Relief; Verified Petitioner for Writ of Mandate and/or Prohibition or Other Appropriate Relief	8
07/19/2019	Defendants' Answer to Complaint for Declaratory and Injunctive Relief; Verified Petitioner for Writ of Mandate and/or Prohibition or Other Appropriate Relief	20
07/26/2019	Request for Dismissal Re: Second Cause of Action for Writ of Mandate and/or Prohibition Only	33
04/30/2020	Defendants' Notice of Motion and Motion for Summary Judgment	36
04/30/2020	Memorandum of Points & Authorities in Support of Defendants' Motion for Summary Judgment	38
04/30/2020	Separate Statement of Undisputed Facts in Support of Defendants' Motion for Summary Judgment	64

VOLUME II

04/30/2020	Request for Judicial Notice in Support of Defendants' Motion for Summary Judgment	76
04/30/2020	Declaration of James Allison in Support of Defendants' Motion for Summary Judgment	310

VOLUME III

04/30/2020	Exhibits 1-8 to Declaration of James Allison in Support of Defendants' Motion for Summary Judgment	322
------------	--	-----

VOLUME IV

04/30/2020	Part 1 of 2 of Exhibit 9-13 to Declaration of James Allison in Support of Defendants' Motion for Summary Judgment	615
------------	---	-----

INDEX TO APPELLANTS' APPENDIX

CHRONOLOGICAL

DATE	DOCUMENT	PAGE
VOLUME V		
04/30/2020	Part 2 of 2 of Exhibit 9-13 to Declaration of James Allison in Support of Defendants' Motion for Summary Judgment	915
05/11/2020	Plaintiffs' Notice of Motion and Motion for Summary Judgment	1167
05/11/2020	Memorandum of Points & Authorities in Support of Plaintiffs' Motion for Summary Judgment	1170
VOLUME VI		
05/11/2020	Separate Statement of Undisputed Material Facts in Support of Plaintiffs' Motion for Summary Judgment	1203
05/11/2020	Part 1 of 2 of Request for Judicial Notice in Support of Plaintiffs' Motion for Summary Judgment; Exhibits A-W	1219
VOLUME VII		
05/11/2020	Part 2 of 2 of Request for Judicial Notice in Support of Plaintiffs' Motion for Summary Judgment; Exhibits A-W	1503
05/11/2020	Part 1 of 2 of Declaration of Anna M. Barvir in Support of Plaintiffs' Motion for Summary Judgment; Exhibits X-SS	1672
VOLUME VIII		
05/11/2020	Part 2 of 2 of Declaration of Anna M. Barvir in Support of Plaintiffs' Motion for Summary Judgment; Exhibits X-SS	1803
05/11/2020	Declaration of G. Mitchell Kirk in Support of Plaintiffs' Motion for Summary Judgment	2083
05/11/2020	Declaration of Michael Barranco in Support of Plaintiffs' Motion for Summary Judgment	2087
VOLUME IX		
06/11/2020	Defendants' Memorandum of Points & Authorities in Opposition to Plaintiffs' Motion for Summary Judgment	2099

INDEX TO APPELLANTS' APPENDIX

CHRONOLOGICAL

DATE	DOCUMENT	PAGE
06/11/2020	Defendants' Separate Statement in Opposition to Plaintiffs' Motion for Summary Judgment	2126
06/11/2020	Plaintiffs' Memorandum of Points & Authorities in Opposition to Defendants' Motion for Summary Judgment	2148
06/11/2020	Plaintiffs' Response to Defendants' Separate Statement of Undisputed acts and Plaintiffs' Additional Undisputed Material Facts in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment	2175
06/11/2020	Part 1 of 2 of Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment; Exhibits X-VV	2193

VOLUME X

06/11/2020	Part 2 of 2 of Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment; Exhibits X-VV	2399
------------	---	------

VOLUME XI

06/11/2020	Plaintiffs' Evidentiary Objections in Support of Opposition to Defendants' Motion for Summary Judgment	2693
06/23/2020	Defendants' Reply Memorandum of Points & Authorities in Support of Defendants' Motion for Summary Judgment	2707
06/23/2020	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Summary Judgment	2722
07/30/2020	Order Re: Cross-Motions for Summary Judgment	2734
01/12/2021	Notice of Appeal (Unlimited Civil Case)	2761
01/12/2021	Declaration of Anna M. Barvir Re: Notice of Appeal	2763
01/14/2021	Clerk's Notice of Appeal (Unlimited Civil Case)	2786
01/20/2021	Judgment	2787
01/22/2021	Appellants' Notice Designating Record on Appeal	2790

INDEX TO APPELLANTS' APPENDIX

ALPHABETICAL

VOL	DATE	DOCUMENT	PAGE
XI	01/22/2021	Appellants' Notice Designating Record on Appeal	2790
XI	01/14/2021	Clerk's Notice of Appeal (Unlimited Civil Case)	2786
I	04/15/2019	Complaint for Declaratory and Injunctive Relief; Verified Petitioner for Writ of Mandate and/or Prohibition or Other Appropriate Relief	8
XI	01/12/2021	Declaration of Anna M. Barvir Re: Notice of Appeal	2763
VIII	05/11/2020	Declaration of G. Mitchell Kirk in Support of Plaintiffs' Motion for Summary Judgment	2083
II	04/30/2020	Declaration of James Allison in Support of Defendants' Motion for Summary Judgment	310
VIII	05/11/2020	Declaration of Michael Barranco in Support of Plaintiffs' Motion for Summary Judgment	2087
I	07/19/2019	Defendants' Answer to Complaint for Declaratory and Injunctive Relief; Verified Petitioner for Writ of Mandate and/or Prohibition or Other Appropriate Relief	20
IX	06/11/2020	Defendants' Memorandum of Points & Authorities in Opposition to Plaintiffs' Motion for Summary Judgment	2099
I	04/30/2020	Defendants' Notice of Motion and Motion for Summary Judgment	36
XI	06/23/2020	Defendants' Reply Memorandum of Points & Authorities in Support of Defendants' Motion for Summary Judgment	2707
IX	06/11/2020	Defendants' Separate Statement in Opposition to Plaintiffs' Motion for Summary Judgment	2126
III	04/30/2020	Exhibits 1-8 to Declaration of James Allison in Support of Defendants' Motion for Summary Judgment	322
XI	01/20/2021	Judgment	2787
I	04/30/2020	Memorandum of Points & Authorities in Support of Defendants' Motion for Summary Judgment	38

INDEX TO APPELLANTS' APPENDIX

ALPHABETICAL

VOL	DATE	DOCUMENT	PAGE
V	05/11/2020	Memorandum of Points & Authorities in Support of Plaintiffs' Motion for Summary Judgment	1170
XI	01/12/2021	Notice of Appeal (Unlimited Civil Case)	2761
XI	07/30/2020	Order Re: Cross-Motions for Summary Judgment	2734
VII	05/11/2020	Part 1 of 2 of Declaration of Anna M. Barvir in Support of Plaintiffs' Motion for Summary Judgment; Exhibits X-SS	1672
IX	06/11/2020	Part 1 of 2 of Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment; Exhibits X-VV	2193
IV	04/30/2020	Part 1 of 2 of Exhibit 9-13 to Declaration of James Allison in Support of Defendants' Motion for Summary Judgment	615
VI	05/11/2020	Part 1 of 2 of Request for Judicial Notice in Support of Plaintiffs' Motion for Summary Judgment; Exhibits A-W	1219
VIII	05/11/2020	Part 2 of 2 of Declaration of Anna M. Barvir in Support of Plaintiffs' Motion for Summary Judgment; Exhibits X-SS	1803
X	06/11/2020	Part 2 of 2 of Declaration of Anna M. Barvir in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment; Exhibits X-VV	2399
V	04/30/2020	Part 2 of 2 of Exhibit 9-13 to Declaration of James Allison in Support of Defendants' Motion for Summary Judgment	915
VII	05/11/2020	Part 2 of 2 of Request for Judicial Notice in Support of Plaintiffs' Motion for Summary Judgment; Exhibits A-W	1503
XI	06/11/2020	Plaintiffs' Evidentiary Objections in Support of Opposition to Defendants' Motion for Summary Judgment	2693

INDEX TO APPELLANTS' APPENDIX

ALPHABETICAL

VOL	DATE	DOCUMENT	PAGE
IX	06/11/2020	Plaintiffs' Memorandum of Points & Authorities in Opposition to Defendants' Motion for Summary Judgment	2148
V	05/11/2020	Plaintiffs' Notice of Motion and Motion for Summary Judgment	1167
XI	06/23/2020	Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Summary Judgment	2722
IX	06/11/2020	Plaintiffs' Response to Defendants' Separate Statement of Undisputed acts and Plaintiffs' Additional Undisputed Material Facts in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment	2175
I	07/26/2019	Request for Dismissal Re: Second Cause of Action for Writ of Mandate and/or Prohibition Only	33
II	04/30/2020	Request for Judicial Notice in Support of Defendants' Motion for Summary Judgment	76
I	04/30/2020	Separate Statement of Undisputed Facts in Support of Defendants' Motion for Summary Judgment	64
VI	05/11/2020	Separate Statement of Undisputed Material Facts in Support of Plaintiffs' Motion for Summary Judgment	1203

1 Roderick M. Thompson (State Bar No. 96192)
rthompson@fbm.com
2 James Allison (State Bar No. 319204)
jallison@fbm.com
3 Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
4 San Francisco, California 94104
Telephone: (415) 954-4400
5 Facsimile: (415) 954-4480

6 Hannah Shearer (State Bar No. 292710)
hshearer@giffords.org
7 Hannah Friedman (State Bar No. 324771)
hfriedman@giffords.org
8 Giffords Law Center to Prevent Gun Violence
268 Bush Street #555
9 San Francisco, CA 94104
Telephone: (415) 433-2062
10 Facsimile: (415) 433-3357

11 Attorneys for CITY OF MORGAN HILL,
MORGAN HILL CHIEF OF POLICE DAVID
12 SWING, MORGAN HILL CITY CLERK IRMA
TORREZ
13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SANTA CLARA, DOWNTOWN COURTHOUSE
16

16 G. MITCHELL KIRK; and CALIFORNIA
17 RIFLE & PISTOL ASSOCIATION,
INCORPORATED,
18

19 Plaintiffs and Petitioners,

20 vs.

21 CITY OF MORGAN HILL; MORGAN HILL
CHIEF OF POLICE DAVID SWING, in his
22 official capacity; MORGAN HILL CITY
CLERK IRMA TORREZ, in her official
23 capacity; and DOES 1-10,
24

25 Defendants and Respondents.
26
27
28

Case No. 19CV346360

**EXHIBITS 9-13 TO JAMES ALLISON
DECLARATION IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Action Filed: April 15, 2019

EXHIBIT 9

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 6. Control of Deadly Weapons (Refs & Annos)
Title 4. Firearms (Refs & Annos)
Division 4.5. Lost or Stolen Firearms (Refs & Annos)

West's Ann.Cal.Penal Code § 25250

§ 25250. Loss or theft of firearm; report to local law enforcement agency

Effective: November 9, 2016

[Currentness](#)

(a) Commencing July 1, 2017, every person shall report the loss or theft of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost.

(b) Every person who has reported a firearm lost or stolen under subdivision (a) shall notify the local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days if the firearm is subsequently recovered by the person.

(c) Notwithstanding subdivision (a), a person shall not be required to report the loss or theft of a firearm that is an antique firearm within the meaning of [subdivision \(c\) of Section 16170](#).

Credits

(Added by [Initiative Measure \(Prop. 63, § 4.1, approved Nov. 8, 2016, eff. Nov. 9, 2016\)](#).)

West's Ann. Cal. Penal Code § 25250, CA PENAL § 25250

Current with urgency legislation through Ch. 3 of 2020 Reg.Sess

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT 10

OAKLAND - MUNICIPAL CODE

1997

A Codification of the General Ordinances
of the City of Oakland, California

Beginning with Supp. No. 46,
Supplemented by Municipal Code Corporation

**PREFACE**

The Oakland, California Municipal Code, originally published by Book Publishing Company, has been kept current by regular supplementation by Municipal Code Corporation, its successor in interest.

During original codification, the ordinances were compiled, edited and indexed by the editorial staff of Book Publishing Company under the direction of Mark Morodomi, Assistant City Attorney; Tamika Thomas, Assistant City Clerk; LaTonda Simmons, City Clerk and Secretary to the Redevelopment Successor Agency.

The Code is organized by subject matter under an expandable three-factor decimal numbering system which is designed to facilitate supplementation without disturbing the numbering of existing provisions. Each section number designates, in sequence, the numbers of the Title, Chapter, and Section. Thus, Section 2.12.040 is Section .040, located in Chapter 2.12 of

Title 2. In most instances, sections are numbered by "tens" (.010, .020, .030, etc.), leaving nine vacant positions between original sections to accommodate future provisions. Similarly, chapters and titles are numbered to provide for internal expansion.

In parentheses following each section is a legislative history identifying the specific sources for the provisions of that section. This legislative history is complemented by an ordinance disposition table, following the text of the Code, listing by number all ordinances, their subjects, and where they appear in the codification. Beginning with Supplement No. 46, legislation can be tracked using the "Code Comparative Table and Disposition List."

A subject-matter index, with complete cross-referencing, locates specific Code provisions by individual section numbers.

This supplement brings the Code up to date through Ordinance No. 13564, passed October 1, 2019.

Municipal Code Corporation
1700 Capital Circle SW
Tallahassee, FL 32310
800-262-2633

HOW TO USE YOUR CODE

This Code is organized to make the laws of the city as accessible as possible to city officials, city employees and private citizens. Please take a moment to familiarize yourself with some of the important elements of this Code.

Numbering System.

The numbering system is the backbone of a Code of Ordinances; Municipal Code Corporation uses a unique and versatile numbering structure that allows for easy expansion and amendment of this Code. It is based on three tiers, beginning with the title, then chapter, and ending with section. Each part is represented in the Code section number. For example, Section 2.04.010 is Section .010, in Chapter 2.04 of Title 2.

Title.

A title is a broad category under which ordinances on a related subject are compiled. This Code contains about 15 to 20 titles. For example, the first title is Title 1, General Provisions, which may contain ordinances about the general penalty, Code adoption and definitions. The titles in this Code are separated by tabbed divider pages for quick reference. Some titles are "Reserved" for later use.

Chapter.

Chapters deal with more specific subjects, and are often derived from one ordinance. All of the chapters on a related subject are grouped in one title. The chapters are numbered so that new chapters which should logically be placed near certain existing chapters can be added at a later time without renumbering existing material. For example, Chapter 2.06, City Manager, can be added between 2.04, City Council, and Chapter 2.08, City Attorney.

Section.

Each section of the Code contains substantive ordinance material. The sections are numbered by "tens" to allow for expansion of the Code without renumbering.

Tables of Contents.

There are many tables of contents in this Code to assist in locating specific information. At the beginning of the Code is the main table of contents listing each title. In addition, each title and chapter has its own table of contents listing the chapters and sections, respectively.

Ordinance History Note.

At the end of each Code section, you will find an "ordinance history note," which lists the underlying ordinances for that section. The ordinances are listed by number, section (if applicable) and year. (Example: (Ord. 272 § 1, 1992).) Ordinance history notes will be amended with the most recent ordinance added to the beginning. These history notes can be cross referenced to the Code Comparative Table and Disposition List appearing at the back of the volume preceding the index.

Statutory References.

The statutory references direct the Code user to those portions of the state statutes that are applicable to the laws of the municipality. As the statutes are revised, these references will be updated.

Cross-Reference Table.

When a Code is based on an earlier codification, the cross-reference table will help users find older or "prior" Code references in the new Code. The cross-reference table is located near the end of the Code, under the tabbed divider "Tables." This table lists the prior Code section in the column labeled "Prior Code Section" and the new Code section in the column labeled "Herein."

As of Supplement No. 46, this table will no longer be updated.

Ordinance List and Disposition Table.

To find a specific ordinance in the Code, turn to the section called "Tables" for the Ordinance List and Disposition Table. This table tells you the status of every ordinance reviewed for inclusion in the Code. The table is organized by ordinance number and provides a brief description and the disposition of the ordinance. If the ordinance is codified, the chapter (or chapters) will be indicated. (Example: (2.04, 6.12, 9.04).) If the ordinance is of a temporary nature or deals with subjects not normally codified, such as budgets, taxes, annexations or rezones, the disposition will be "(Special)." If the ordinance is for some reason omitted from the Code, usually at the direction of the municipality, the disposition will be "(Not codified)." Other dispositions sometimes used are "(Tabled)," "(Pending)," "(Number Not Used)" or "(Missing)."

Beginning with Supplement No. 46, this table will be replaced with the "Code Comparative Table and Disposition List."

Code Comparative Table and Disposition List.

Beginning with Supplement No. 46, a Code Comparative Table and Disposition List has been added for use in tracking legislative history. Located in the back of Volume II, this table is a chronological listing of each ordinance considered for codification. The Code Comparative Table and Disposition List specifies the ordinance number, adoption date, description of the ordinance and the disposition within the Code of each ordinance. By use of the Code Comparative Table and Disposition List, the reader can locate any section of the Code as supplemented, and any subsequent ordinance included herein.

Index.

If you are not certain where to look for a particular subject in this Code, start with the index. This is an alphabetical multi-tier subject index which uses section numbers as the reference, and cross-references where necessary. Look for the main heading of the subject you need, then the appropriate subheadings:

BUSINESS LICENSE

See also BUSINESS TAX

Fee 5.04.030

Required when 5.04.010

The index will be updated as necessary when the Code text is amended.

Instruction Sheet.

Each supplement to the new Code will be accompanied by an Instruction Sheet. This sheet will tell the Code user the date of the most recent supplement and the last ordinance contained in that supplement. It will then list the pages that must be pulled from the Code and the new pages that must be inserted. Following these instructions carefully will assure that the Code is kept accurate and current. Removed pages should be kept for future reference.

Page Numbers.

When originally published, this Code was numbered with consecutive page numbers. As it is amended, new material may require the insertion of new pages that are numbered with decimals. (Example: 31, 32, 32.1.) Backs of pages that are blank (in codes that are printed double-sided) are left unnumbered but the number is "reserved" for later use.

Electronic Submission.

In the interests of accuracy and speed, we encourage you to submit your ordinances electronically if at all possible. We can accept most any file format, including Word, WordPerfect or text files. We prefer Word, any version. You can send files to us as an e-mail attachment, by FTP, on a diskette or CD-ROM. Electronic files enable us not only to get you your Code more quickly but also reduce the number of errors. Our e-mail address is: **ords@municode.com** .

For hard copy, send two copies of all ordinances passed to:

Municipal Code Corporation
P.O. Box 2235
Tallahassee, FL 32316

Customer Service.

If you have any questions about this Code or our services, please contact Municipal Code Corporation at 1-800-262-2633 or:

Municipal Code Corporation
1700 Capital Circle SW
Tallahassee, FL 32310

CITY OF OAKLAND

MAYOR

Libby Schaaf

COUNCIL MEMBERS

District 1	Dan Kalb <i>President Pro Tem</i>
District 2	Nikki Fortunato-Bas
District 3	Lynette Gibson-McElhaney
District 4	Sheng Thao
District 5	Noel Gallo
District 6	Loren Taylor

District 7	Larry Reid <i>Vice Mayor</i>
At-Large	Rebecca Kaplan <i>President of the City Council</i>

CITY ADMINISTRATOR

Sabrina Landreth

CITY ATTORNEY

Barbara Parker

CITY AUDITOR

Courtney Ruby

CITY CLERK AND CLERK OF THE COUNCIL

LaTonda Simmons

9.36.131 - Theft or loss of firearms—Reporting of stolen and/or lost firearms required.

- A. Any person owning a firearm or in possession of a firearm is required to report the theft or loss of such firearm to the Oakland Police Department when:
 - 1. Owner resides in Oakland, AND/OR
 - 2. The theft or loss of the firearm occurs in Oakland.
- B. A person subject to the reporting requirements in Subsection A. is required to report the theft or loss of a firearm within 48 hours of when he or she knew or reasonably should have known that the firearm was stolen or lost.
- C.

A person who has experienced the theft or loss of a firearm between August 1, 1992 and July 30, 2002 and who otherwise meets the reporting requirements in subsection A is required to report the loss or theft of such firearm to the Oakland Police Department within sixty (60) days of the effective date of the Amendment under which this new section was adopted.

(Ord. No. 12996, 2-16-2010; Ord. 12529 § 1 (part), 2003)

POLICE CODE



New Ordinance Notice

Publisher's Note: This Code includes sections affected by new legislation. [Click here](#) for a list of the new legislation and the affected sections.

This electronic version of the Police Code was last updated to include changes made by legislation through Ordinance [41-20](#), File No. 191184, approved March 13, 2020, effective April 13, 2020.

See the Comprehensive Ordinance Table for information regarding amendments to other portions of the San Francisco Municipal Code.



AMERICAN LEGAL PUBLISHING CORPORATION

One West Fourth Street, 3rd Floor

Cincinnati, Ohio 45202

800-445-5588

Fax: 513-763-3562

www.amlegal.com

THE SAN FRANCISCO CODES

The following San Francisco Codes are published by American Legal:

The Municipal Code:

Charter

Administrative Code

Business and Tax Regulations Code

Campaign and Governmental Conduct Code

Environment Code

Fire Code

Health Code

Municipal Elections Code

Park Code

Planning Code (including Zoning Maps)

Police Code

Port Code

Public Works Code

Subdivision Code
Transportation Code

Building Inspection Commission Codes:

Building Code
Electrical Code
Green Building Code
Housing Code
Mechanical Code
Plumbing Code

Comprehensive Ordinance List

PREFACE TO THE POLICE CODE

This electronic version of the City and County of San Francisco Municipal Code is updated as amending legislation is approved. New Ordinance Notices are inserted where applicable to call the user's attention to material that has been affected by legislation that has been passed but is not yet effective. Any references to such legislation are also compiled in a table at the end of this Code. The amendments are then incorporated into the Code when they become effective.

Beginning with ordinances passed in 2011, all ordinances affecting this Code are summarized in a table that lists the identifying information (ordinance and file numbers), effective date, short title, and sections affected for each such ordinance. Users should note that the operative date of an ordinance may be later than the effective date of the ordinance. A delayed operative date will be noted in the ordinance.

This Code may contain various Editor's Notes (explaining the disposition of or cross referencing various provisions), and/or Codification Notes (documenting scrivener's errors and the like found in the underlying ordinances). Such notes have been inserted by the publisher for the convenience of the user or as historical references. They have not been approved or adopted by the City and County of San Francisco, and are of no legal force or effect.

Article

1. PUBLIC NUISANCES
- 1.1. REGULATING THE USE OF VEHICLES FOR HUMAN HABITATION
- 1.2. DISCRIMINATION IN HOUSING AGAINST FAMILIES WITH MINOR CHILDREN
- 1.3. TEMPORARY MORATORIUM ON RENTAL INCREASES RENT ROLLBACK BASED
UPON APRIL 15, 1979, RENTAL RATES AND REFUNDING ANY RENT INCREASES
- 1.5. DISPLAY OF LIFE AND PROPERTY CONSERVATION DECALS
2. DISORDERLY CONDUCT
3. GAMES OF CHANCE
4. PARADES
- 4.5. FUNERAL PROCESSION ESCORTS
5. OFFENSIVE POWDERS
6. FRAUD AND DECEIT
7. ANIMALS AND BIRDS
- 7.1. HORSE-DRAWN VEHICLES
8. MINORS
9. MISCELLANEOUS CONDUCT REGULATIONS
- 9.5. PROHIBITING OF PROFESSIONAL STRIKEBREAKERS
- 9.6. REGULATIONS FOR SOLICITATION FOR CHARITABLE PURPOSES
10. REGULATIONS FOR ADVERTISING
- 10.1. REGULATING EXPOSURE OF PHOTOGRAPHS, CARTOONS OR DRAWINGS ON
NEWSRACKS
- 10.2. REGULATION OF COMPUTER RENTAL BUSINESSES
11. REGULATIONS FOR AMUSEMENTS

- 11.1. COMMERCIAL DISPLAY OF DEAD HUMAN BODIES
- 11.2. REGULATIONS FOR ADULT THEATERS AND ADULT BOOKSTORES PERMIT AND LICENSE PROVISIONS
- 12. REGULATIONS FOR AUTOMOBILES
- 13. MISCELLANEOUS REGULATIONS FOR PROFESSIONS AND TRADES
- 13.1. JUNK DEALERS – PERMIT AND REGULATION
- 13.2. BICYCLE MESSENGER BUSINESSES
- 13.3. CAR RENTAL BUSINESSES
- 13.4. REDUCING RENTAL-CAR BURGLARIES
- 14. LICENSES FOR ADVERTISING
- 15. LICENSES FOR AMUSEMENTS
- 15.1. ENTERTAINMENT REGULATIONS PERMIT AND LICENSE PROVISIONS
- 15.2. ENTERTAINMENT REGULATIONS FOR EXTENDED-HOURS PREMISES
- 15.3. PROHIBITING NUDE PERFORMERS, WAITERS AND WAITRESSES
- 15.4. ENCOUNTER STUDIOS
- 15.5. NUDE MODELS IN PUBLIC PHOTOGRAPHY STUDIOS
- 15.6. ESCORT SERVICES
- 15.7. EVENT PROMOTERS
- 16. REGULATION OF CANNABIS
- 17. MISCELLANEOUS LICENSE REGULATIONS
- 17.1. REGULATIONS FOR FORTUNETELLING; PERMIT AND LICENSE PROVISIONS
- 18. SAN FRANCISCO POLICE PISTOL RANGE
- 19. DISPOSAL OF UNCLAIMED PROPERTY
- 20. REPRODUCING AND FURNISHING REPORTS
- 22. CITATIONS FOR VIOLATIONS OF CERTAIN PROVISIONS OF THE HEALTH CODE AND POLICE CODE
- 23. REGULATIONS FOR PORT AREA
- 24. REGULATING STREET ARTISTS
- 25. REGULATIONS FOR PRIVATE PROTECTION AND SECURITY SERVICES
- 26. REGULATIONS FOR PUBLIC BATH HOUSES
- 27. REGULATIONS FOR MORTGAGE MODIFICATION CONSULTANTS
- 28. REGULATIONS FOR PAWNBROKERS PERMIT AND LICENSE PROVISIONS
- 29. REGULATION OF NOISE
- 30. PERMITS FOR TOW CAR DRIVERS
- 30.1. PERMITS FOR TOW CAR FIRMS
- 31. REGULATIONS FOR TEMPORARY HELIPORTS AND PERMIT PROVISIONS
- 32. REGULATIONS FOR CONDUCTING BINGO GAMES
- 32A. REGULATIONS FOR CONDUCTING POKER GAMES
- 33. PROHIBITING DISCRIMINATION BASED ON RACE, COLOR, ANCESTRY, NATIONAL ORIGIN, PLACE OF BIRTH, SEX, AGE, RELIGION, CREED, DISABILITY, SEXUAL ORIENTATION, GENDER IDENTITY, WEIGHT, OR HEIGHT
- 33A. PROHIBITION OF EMPLOYER INTERFERENCE WITH EMPLOYEE RELATIONSHIPS AND ACTIVITIES AND REGULATIONS OF EMPLOYER DRUG TESTING OF EMPLOYEES
- 33B. PROHIBITION AGAINST DISCRIMINATION BY CLUBS OR ORGANIZATIONS WHICH ARE NOT DISTINCTLY PRIVATE
- 33C. DISPLACED WORKER PROTECTION
- 33D. GROCERY WORKER RETENTION
- 33E. HOSPITALITY INDUSTRY WORKER RETENTION
- 33F. HOURS AND RETENTION PROTECTIONS FOR FORMULA RETAIL EMPLOYEES
- 33G. PREDICTABLE SCHEDULING AND FAIR TREATMENT FOR FORMULA RETAIL EMPLOYEES
- 33H. PAID PARENTAL LEAVE
- 33I. LACTATION IN THE WORKPLACE
- 33J. PARITY IN PAY
- 34. REGULATIONS FOR PHOTOGRAPHERS—PERMIT AND LICENSE PROVISIONS
- 35. FIREARM STRICT LIABILITY ACT

- 36. PROHIBITING THE CARRYING OF A FIREARM WHILE UNDER THE INFLUENCE OF AN ALCOHOLIC BEVERAGE OR DRUG, OR POSSESSION OF A FIREARM WHILE UPON PUBLIC PREMISES SELLING OR SERVING ALCOHOLIC BEVERAGES
- 36A. [SALE, MANUFACTURE AND DISTRIBUTION OF FIREARMS AND AMMUNITION; POSSESSION OF HANDGUNS]
- 36B. STORAGE OF FIREARMS IN MOTOR VEHICLES
- 36C. PROHIBITION OF FIREARMS AT PUBLIC GATHERINGS
- 36D. GUN VIOLENCE RESTRAINING ORDERS
- 37. POLICE EMERGENCY ALARM ORDINANCE
- 38. PROHIBITING DISCRIMINATION ON THE BASIS OF AIDS AND ASSOCIATED CONDITIONS
- 39. PEDICABS
- 40. DRUG FREE WORKPLACE ORDINANCE
- 41. PROHIBITING THE SALE OR POSSESSION OF REPLICA HYPODERMIC NEEDLES OR SYRINGES
- 42. SALE AND DISPLAY OF AEROSOL PAINT CONTAINERS AND MARKER PENS
- 42A. COLOR TIRES
- 42B. MERCURY THERMOMETERS
- 42D. SALE AND DISPLAY OF PRODUCTS CONTAINING HYDROFLUORIC ACID
- 43. ACCESS TO REPRODUCTIVE HEALTH CARE FACILITIES
- 44. CLOSED CAPTIONS ACTIVATION REQUIREMENT ORDINANCE
- 45. FIREARMS AND WEAPONS VIOLENCE PREVENTION ORDINANCE
- 46. PROHIBITING SELF-SERVICE MERCHANDISING OF TOBACCO PRODUCTS EXCEPT IN PLACES TO WHICH MINORS HAVE NO ACCESS
- 47. PERSONAL WATERCRAFT
- 48. LASER POINTERS
- 49. PROCEDURES FOR CONSIDERING ARRESTS AND CONVICTIONS AND RELATED INFORMATION IN EMPLOYMENT AND HOUSING DECISIONS
- 50. CRIMINAL HISTORY IN ADMISSION TO POST-SECONDARY EDUCATIONAL INSTITUTIONS
- 51. STORMWATER FLOOD RISK DISCLOSURE
- 52. OCCUPANT'S RIGHT TO CHOOSE A COMMUNICATIONS SERVICES PROVIDER
- 55. ACCEPTANCE OF CASH BY BRICK-AND-MORTAR BUSINESSES

SEC. 616. REPORTING THE LOSS OR THEFT OF FIREARMS.

(a) Any person that owns or is otherwise in possession of a firearm shall report the theft or loss of such firearm to the San Francisco Police Department within 48 hours of becoming aware of the theft or loss whenever

- (1) the owner resides in San Francisco, or
- (2) the theft or loss of the firearm occurs in San Francisco.

(b) The failure of an owner or person in possession of a firearm to report the theft or loss of the firearms within 48 hours of when the owner or person in possession becomes aware or should have become aware of the theft or loss shall be punishable in accordance with Section 613.19.

(c) The failure of an owner or person in possession of a firearm to report the theft or loss of the firearms in a timely manner shall create a rebuttable presumption that the owner or person remains in possession of the firearm.

(Added by Ord. 260-04, File No. 031932, App. 11/4/2004; amended by Ord. [249-13](#), File No. 130585, App. 11/8/2013, Eff. 12/8/2013)

(Former Sec. 616 added by Ord. 1.075, App. 10/11/38; repealed by Ord. 260-04, File No. 031932, App. 11/4/2004)

FOREWORD

The First Edition of the Municipal Code of the City of Los Angeles, enacted by adoption of Ordinance No. 77,000, codified the regulatory and penal ordinances of the City. It became effective November 12, 1936. The Second Edition amended the Code through September 10, 1945. From 1955 to 1958, a Third Edition was published in loose-leaf form. This format made possible the continual page-for-page revision system that has been retained in subsequent editions. A Fourth Edition was published November 30, 1973. The Fifth Edition initially updated the Code through June 30, 1989. This Sixth Edition is current upon publication through September 30, 2002, and will be maintained up-to-date by the incorporation of subsequently published revision packages. The Sixth Edition is copyrighted by the City of Los Angeles. The City intends to register its copyright upon publication.

This newly published Sixth Edition represents a thorough modernization of the Los Angeles Municipal Code. The Sixth Edition retains the loose-leaf format of prior editions but, for the first time, the Code is presented on standard-sized 8½" × 11" paper. In addition to greatly simplifying the process of printing the Code (and subsequent revisions), the new size brings a number of advantages to the Code user. The standard size is more compatible with office equipment such as copiers and facsimile machines. The larger page size allows the implementation of a completely new dual-column layout that dramatically improves the readability of the Code's text. The new size substantially reduces the overall number of pages of the Code. The increase in the amount of text per page will also tend to reduce the number of pages that the Code user will have to replace in each revision cycle.

The Sixth Edition incorporates a number of other improvements not directly related to the new standard size. The Code has been divided into a larger number of volumes. This change, in combination with the overall page reduction described above, allows each new volume to contain far fewer pages than the unwieldy volumes of the previous edition. Chapter contents are more logically presented in this edition, with each Chapter beginning with a list of its constituent Articles, and each Article beginning with a thorough summary of its Sections (or Divisions, as the case may be). This edition also includes two new features that make navigation through the Code easier. Page headers now selectively include subdivision references which will assist the user in finding specific subdivisions in lengthy multi-page sections. Additionally, the headers of alternating pages now specifically identify the page's Chapter and Article by both name and number.

This Sixth Edition of the Los Angeles Municipal Code will assist City offices, departments and other governmental agencies in their functions, and will serve the people as the official source of information regarding the regulations enacted by the City of Los Angeles for the preservation of the public peace, health and safety.

SEC. 55.12. DUTY TO REPORT THEFT OR LOSS OF FIREARMS; EXEMPTIONS.

(Added by Ord. No. 178,010, Eff. 12/3/06.)

A. Any person who owns or possesses a firearm (as defined in Penal Code Section 12001(b) or as amended) shall report the theft or loss of the firearm to the Los Angeles Police Department within 48 hours of becoming aware of the theft or loss, whenever: (1) the person resides in the City of Los Angeles; or (2) the theft or loss of the firearm occurs in the City of Los Angeles.

B. Any person who has experienced the theft or loss of a firearm within the five years prior to the effective date of this ordinance without the firearm having been recovered during that period, and who otherwise meets the reporting requirements in Section A. above, is required to report the loss or theft of the firearm to the Los Angeles Police Department within 60 days of the effective date of this ordinance.

C. Any person who fails to report the theft or loss of a firearm as required in Subsections A. or B., when the person knew or should have known of the theft or loss, shall be guilty of a misdemeanor.

D. Persons licensed to sell or manufacture firearms pursuant to Penal Code Sections 12071 or 12086 are exempt from this section, if the firearm lost or stolen was business merchandise, was lost or stolen from their firearm-related business, or was in their possession pursuant to Penal Code Section 12082.

E. If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions, which can be implemented without the invalid provisions, and to this end, the provisions of this ordinance are declared to be severable.

Campbell, California - Code of Ordinances - Title 8 - PUBLIC PEACE, SAFETY AND MO... - Chapter 8.12 - FIREARMS / 8.12.045 - Reporting of loss or theft of fi...

VERSION: MAR 10, 2020 (CURRENT) CAMPBELL MUNICIPAL CODE 1971

SUPPLEMENT HISTORY TABLE [modified](#)

- Title 1 - GENERAL PROVISIONS
- Title 2 - ADMINISTRATION AND PERSONNEL
- Title 3 - REVENUE AND FINANCE

8.12.045 - Reporting of loss or theft of firearm.

It is unlawful for any person to fail to report to the Police Department the theft or loss of a firearm he or she owns or possesses within forty-eight hours of the time he or she knew or reasonably should have known that the firearm has been stolen or lost, if the person resides in the City of Campbell or the loss or theft occurs in the City of Campbell.

Pursuant to Penal Code § 11108, the Police Department shall submit a description of each firearm which has been reported lost or stolen directly into the California Department of Justice automated property system for firearms.

(Ord. No. 2150, § 2(Exh. B), 9-20-2011)

13.75.020 Berkeley residents--Duty to report theft or loss of firearms--Exemptions.

A. All persons residing in Berkeley who own or possess a firearm (as defined in Penal Code Section [12001\(b\)](#) or as amended) shall report the theft or loss of such firearm to the Berkeley Police Department within 48 hours of becoming aware of such theft or loss.

B. Persons licensed to sell or manufacturer firearms pursuant to Penal Code Sections [12071](#) or [12086](#) are exempt from this chapter, if the firearm lost or stolen was business merchandise, was lost or stolen from their firearm-related business, or was in their possession pursuant to Penal Code Section [12082](#). (Ord. 6619-NS § 1, 2001)

Compile Chapter

The Berkeley Municipal Code is current through Ordinance 7685-NS, passed January 21, 2020.

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.cityofberkeley.info/Home.aspx>
(<http://www.cityofberkeley.info/Home.aspx>)
Telephone number: (510) 981-6900
Code Publishing Company
(<https://www.codepublishing.com/>)

Home (<http://www.cityofberkeley.info>) | Web Policy (<http://www.cityofberkeley.info/webpolicy>) | Text-Only Site Map
(<http://www.cityofberkeley.info/SiteMap.aspx>) | Contact Us (<http://www.cityofberkeley.info/contactus>)
City Clerk (<http://www.cityofberkeley.info/clerk>) , 2180 Milvia Street, Berkeley, CA 94704
Questions or comments? Email: clerk@cityofberkeley.info (<mailto:clerk@cityofberkeley.info>) Phone: (510) 981-6900

Huntington Park Municipal Code							
Up	Previous	Next	Main		Search	Print	No Frames
TITLE 5 PUBLIC WELFARE, MORALS, AND CONDUCT							
Chapter 17 WEAPONS							

5-17.05 Mandatory reporting of lost or stolen firearms.

Any person residing or doing business in the City of Huntington Park who owns, or possesses a firearm, as defined in the California Penal Code, shall report the theft or loss of the firearm to the Huntington Park Police Department within forty-eight (48) hours after his or her discovery or knowledge of the theft or loss.

(§ 1, Ord. 803-NS, eff. July 18, 2007)

View the [mobile version](#).

Sacramento City Code							
Up	Previous	Next	Main		Search	Print	No Frames
Title 9 PUBLIC PEACE, MORALS AND WELFARE							
Chapter 9.32 WEAPONS AND EXPLOSIVES							
Article I. In General							

9.32.180 Reporting of stolen or lost firearms required.

It is unlawful for any person who owns or possesses a firearm to knowingly or negligently fail to report the theft or loss of such firearm to the Sacramento police department within forty-eight (48) hours of the time he or she knew or should have known the firearm has been stolen or lost, when either the owner or possessor resides in the city, or the theft or loss of the firearm occurs in the city. Any person violating this section is guilty of a misdemeanor. (Ord. 2016-0005 § 4; Ord. 2007-066 § 1)

View the [mobile version](#).

PORT HUENEME, CALIFORNIA - MUNICIPAL CODE

A Codification of the General Ordinances of
the City of Port Hueneme, California

Beginning with Supp. No. 9,
Supplemented by Municipal Code Corporation

municode



Municipal Code Corporation P.O. Box 2235 Tallahassee, FL 32316
info@municode.com 800.262.2633 www.municode.com

CITY OFFICIALS

City Manager:	Rod Butler
City Attorney:	Mark D. Hensley
City Treasurer:	Alvin Burrell

Deputy City Manager:	Carmen Nichols
Police Chief:	Robert Albertson
Community Development and Housing Director:	Carmen Nichols
Public Works Director:	Don Villafana
City Clerk/Public Information Officer:	Michele Kostenuik

PREFACE

The Port Hueneme, California Municipal Code, originally published by Book Publishing Company, has been kept current by regular supplementation by Matthew Bender & Company, Inc., its successor in interest.

Beginning with Supplement No. 9, Municipal Code Corporation will be keeping this code current by regular supplementation.

During original codification, the ordinances were compiled, edited and indexed by the

editorial staff of Book Publishing Company under the direction of Karen Jackson, City Clerk.

In parentheses following each section is a legislative history identifying the specific sources for the provisions of that section. This legislative history is complemented by an ordinance disposition table, following the text of the code, listing by number all ordinances, their subjects, and where they appear in the codification; and beginning with Supplement No. 9, legislation can be tracked using the "Code Comparative Table and Disposition List."

A subject-matter index, with complete cross-referencing, locates specific code provisions by individual section numbers.

This supplement brings the Code up to date through Ordinance 759, passed December 2, 2019.

Municipal Code Corporation
1700 Capital Circle SW
Tallahassee, FL 32310
800-262-2633

HOW TO USE YOUR CODE

This code is organized to make the laws of the city as accessible as possible to city officials, city employees and private citizens. Please take a moment to familiarize yourself with some of the important elements of this code.

Article.

An article is a broad category under which ordinances on a related subject are compiled. This code contains about 15 to 20 articles. For example, the first article is Article I, General, which may contain ordinances about the general penalty, code adoption and definitions. The articles in this code are separated by tabbed divider pages for quick reference.

Chapter.

Chapters deal with more specific subjects, and are often derived from one ordinance. All of the chapters on a related subject are grouped in one article.

Section.

Each section of the code contains substantive ordinance material.

Table of Contents. At the beginning of the code is the table of contents listing each title.

Ordinance History Note.

At the end of each code section, you will find an "ordinance history note," which lists the underlying ordinances for that section. The ordinances are listed by number, section (if applicable) and year. (Example: (Ord. 272 § 1, 1992).)

Beginning with Supplement No. 9, a secondary ordinance history note will be appended to affected sections. Ordinance history notes will be amended with the most recent ordinance added to the end. These history notes can be cross referenced to the code comparative table and disposition list appearing at the back of the volume preceding the index.

Statutory References.

The statutory references direct the code user to those portions of the state statutes that are applicable to the laws of the municipality. As the statutes are revised, these references will be updated.

Ordinance List and Disposition Table.

To find a specific ordinance in the code, turn to the section called "Tables" for the Ordinance List and Disposition Table. This very useful table tells you the status of every ordinance reviewed for inclusion in the code. The table is organized by ordinance number and provides a brief description and the disposition of the ordinance. If the ordinance is codified, the article(s), chapter (s) and/or section(s) will be indicated. If the ordinance is of a temporary nature or deals with subjects not normally codified, such as budgets, taxes, annexations or rezones, the disposition will be "(Special)." If the ordinance is for some reason omitted from the code, usually at the direction of the municipality, the disposition will be "(Not codified)." Other dispositions sometimes used are "(Tabled)," "(Pending)," "(Number Not Used)" or "(Missing)."

Beginning with Supplement No. 9, this table will be replaced with the "Code Comparative Table and Disposition List."

Code Comparative Table and Disposition List.

Beginning with Supplement No. 9, a Code Comparative Table and Disposition List has been added for use in tracking legislative history. Located in the back of this volume, this table is a chronological listing of each ordinance considered for codification. The Code Comparative Table and Disposition List specifies the ordinance number, adoption date, description of the ordinance

and the disposition within the code of each ordinance. By use of the Code Comparative Table and Disposition List, the reader can locate any section of the code as supplemented, and any subsequent ordinance included herein.

Index.

If you are not certain where to look for a particular subject in this code, start with the index. This is an alphabetical multi-tier subject index which uses section numbers as the reference, and cross-references where necessary. Look for the main heading of the subject you need, then the appropriate subheadings:

BUSINESS LICENSE

See also BUSINESS TAX

TAX 5031

The index will be updated as necessary when the code text is amended.

Instruction Sheet.

Each supplement to the new code will be accompanied by an Instruction Sheet. The Instruction Sheet will tell the code user the date of the most recent supplement and the last ordinance contained in that supplement. It will then list the pages that must be pulled from the code and the new pages that must be inserted. Following these instructions carefully will assure that the code is kept accurate and current. Removed pages should be kept for future reference.

Page Numbers.

When originally published, the pages of this code were consecutively numbered. As of Supplement No. 9, when new pages are inserted with amendments, the pages will follow a "Point Numbering System". (Example: 32, 32.1, 32.2, 32.2.1, 32.2.2., 33). Backs of pages that are blank (in codes that are printed double-sided) will be left unnumbered but the number will be "reserved" for later use.

Electronic Submission.

In the interests of accuracy and speed, we encourage you to submit your ordinances electronically if at all possible. We can accept most any file format, including Word, WordPerfect or text files. If you have a choice, we prefer Word, any version. You can send files to us as an

e-mail attachment, by FTP, on a diskette or CD-ROM. Electronic files enable us not only to get you your code more quickly but also ensure that it is error-free. Our e-mail address is: ords@municode.com.

For hard copy, send two copies of all ordinances passed to:

Municipal Code Corporation
P.O. Box 2235
Tallahassee, FL 32316

Customer Service.

If you have any questions about this code or our services, please contact Municipal Code Corporation at 1-800-262-2633 or:

Municipal Code Corporation
1700 Capital Circle SW
Tallahassee, FL 32310

3914.10 - Reporting lost or stolen firearms.

Any person residing or doing business in Port Hueneme who owns, or possesses a firearm, as defined in the Penal Code, shall report the theft or loss of the firearm, if it is lost or stolen on or after September 8, 2007 to the Port Hueneme Police Department within forty-eight (48) hours after his or her discovery or knowledge of the theft or loss. Any person residing or doing business in Port Hueneme who has experienced the loss or theft of a firearm, as defined in the Penal Code, in Port Hueneme within the five (5) years prior to September 8, 2007 without the firearm having been recovered during such time, shall report the theft or loss to the Port Hueneme Police Department within ninety (90) days of September 8, 2007.

(Ord. 678 § 1 (part), 2007)

SIMI VALLEY - MUNICIPAL CODE

**A Codification of the General Ordinances of
Simi Valley, California**

**Beginning with Supp. No. 19,
Supplemented by Municipal Code Corporation**

municode



Municipal Code Corporation P.O. Box 2235 Tallahassee, FL 32316
info@municode.com 800.262.2633 www.municode.com

PREFACE

The Simi Valley, California Municipal Code, originally published by Book Publishing Company in 1975, has been kept current by regular supplementation by Municipal Code Corporation, its successor in interest.

During original codification, the ordinances were compiled, edited and indexed by the editorial staff of Book Publishing Company under the direction of Verne H. Tindell, city attorney.

In parentheses following each section is a legislative history identifying the specific sources for the provisions of that section. This legislative history is complemented by an ordinance disposition table, following the text of the code, listing by number all ordinances, their subjects, and where they appear in the codification; and beginning with Supplement No. 19, legislation can be tracked using the "Code Comparative Table and Disposition List."

A subject-matter index, with complete cross-referencing, locates specific code provisions by individual section numbers.

This supplement brings the Code up to date through Ordinance 1297, passed April 8, 2019.

Municipal Code Corporation
1700 Capital Circle SW
Tallahassee, FL 32310
800-262-2633

HOW TO USE YOUR CODE

This code is organized to make the laws of the city as accessible as possible to city officials, city employees and private citizens. Please take a moment to familiarize yourself with some of the important elements of this code.

Numbering System.

The numbering system is the backbone of a Code of Ordinances; Municipal Code Corporation uses a unique and versatile numbering structure that allows for easy expansion and amendment of this Code. It is based on three tiers, beginning with title, then chapter, and ending with section. Each part is represented in the code section number. For example, Section 1-1.01 is Section .01, in Chapter 1 of Title 1.

Title.

A title is a broad category under which ordinances on a related subject are compiled. This code contains 10 titles. For example, the first title is Title 1, General Provisions, which may contain ordinances about the general penalty, code adoption and definitions. The titles in this code are separated by tabbed divider pages for quick reference. Some titles are Reserved for later use.

Chapter.

Chapters deal with more specific subjects, and are often derived from one ordinance. All of the chapters on a related subject are grouped in one title.

Section.

Each section of the code contains substantive ordinance material.

Tables of Contents.

There are many tables of contents in this code to assist in locating specific information. At the beginning of the code is the main table of contents listing each title. In addition, each title and chapter has its own table of contents listing the chapters and sections, respectively.

Ordinance History Note.

At the end of each code section, you will find an "ordinance history note," which lists the underlying ordinances for that section. The ordinances are listed by number, section (if applicable) and effective date. (Example: (§ 1, Ord. 1037, eff. June 11, 2003.)

Statutory References.

The statutory references direct the code user to those portions of the state statutes that are applicable to the laws of the municipality. As the statutes are revised, these references will be updated.

Cross-Reference Table.

When a code is based on an earlier codification, the cross-reference table will help users find older or "prior" code references in the new code. The cross-reference table is located near the end of the code, under the tabbed divider "Tables." This table lists the prior code section in the column labeled "1968 Code Section" and the new code section in the column labeled "1975 Code Section."

As of Supplement No. 19, this table will no longer be updated.

Ordinance List and Disposition Table.

To find a specific ordinance in the code, turn to the section called "Tables" for the Ordinance List and Disposition Table. This very useful table tells you the status of every ordinance reviewed for inclusion in the code. The table is organized by ordinance number and provides a brief description and the disposition of the ordinance. If the ordinance is codified, the chapter (or chapters) will be indicated. (Example: (4-2, 6-1, 9-71).) If the ordinance is of a temporary nature or deals with subjects not normally codified, such as budgets, taxes, annexations or rezones, the disposition will be "(Special)." If the ordinance is for some reason omitted from the code, usually at the direction of the municipality, the disposition will be "(Not codified)." Other dispositions sometimes used are "(Tabled)," "(Pending)," "(Number Not Used)" or "(Missing)."

Beginning with Supplement No. 19, this table will be replaced with the "Code Comparative Table and Disposition List."

Code Comparative Table and Disposition List.

Beginning with Supplement No. 19, a Code Comparative Table and Disposition List has been added for use in tracking legislative history. Located in the back of this volume, this table is a chronological listing of each ordinance considered for codification. The Code Comparative Table and Disposition List specifies the ordinance number, adoption date, description of the ordinance and the disposition within the code of each ordinance. By use of the Code Comparative Table and Disposition List, the reader can locate any section of the code as supplemented, and any subsequent ordinance included herein.

Index.

If you are not certain where to look for a particular subject in this code, start with the index. This is an alphabetical multi-tier subject index which uses section numbers as the reference, and cross-references where necessary. Look for the main heading of the subject you need, then the appropriate subheadings:

BUSINESS LICENSE

See also BUSINESS TAX

Fee 3-1.101

Required when 3-1.104

The index will be updated as necessary when the code text is amended.

Insertion Guide.

Each supplement to the new code will be accompanied by an Insertion Guide. This guide will tell the code user the date of the most recent supplement and the last ordinance contained in that supplement. It will then list the pages that must be pulled from the code and the new pages that must be inserted. Following these instructions carefully will assure that the code is kept accurate and current. Removed pages should be kept for future reference.

Page Numbers.

When originally published, this code was numbered with consecutive page numbers. As it is amended, new material may require the insertion of new pages that are numbered with hyphens. (Example: 31, 32, 32-1.) Backs of pages that are blank (in codes that are printed double-sided) are left unnumbered but the number is "reserved" for later use.

Electronic Submission.

In the interests of accuracy and speed, we encourage you to submit your ordinances electronically if at all possible. We can accept most any file format, including Word, WordPerfect or text files. If you have a choice, we prefer Word, any version. You can send files to us as an e-mail attachment, by FTP, on a diskette or CD-ROM. Electronic files enable us not only to get you your code more quickly but also ensure that it is error-free. Our e-mail address is: ords@municode.com.

For hard copy, send two copies of all ordinances passed to:

Municipal Code Corporation
P.O. Box 2235
Tallahassee, FL 32316

Customer Service.

If you have any questions about this code or our services, please contact Municipal Code Corporation at 1-800-262-2633 or:

Municipal Code Corporation
1700 Capital Circle SW
Tallahassee, FL 32310

5-22.12 - Reporting lost or stolen firearms.

- (a) Any person residing or doing business in the City, who owns or possesses a firearm, as defined in the Penal Code, shall report the theft or loss of the firearm to the Simi Valley Police Department within seventy-two (72) hours after his or her discovery or knowledge of the theft or loss.
- (b) Any person residing or doing business in the City, who has experienced the loss or theft of a firearm, as defined in the Penal Code, in the City within the five (5) years prior to September 13, 2007, without the firearm having been recovered during such time, shall report the theft or loss to the Simi Valley Police Department within ninety (90) days of September 13, 2007.
- (c) Any person who fails to report a lost or stolen firearm pursuant to this section, when the person knew or should have known of the theft or loss, is guilty of a misdemeanor and is punishable as provided in Chapter 2 of Title 1 of this Code.

(§ 1, Ord. 1119, eff. September 13, 2007, as amended by § 1 (Exh. A), Ord. 1151, eff. January 7,

2010)

[Title 9 Public Peace and Safety](#)

[Article 2 – Miscellaneous](#)

[Chapter 9.27 Lost or Stolen Firearms](#)

9.27.010 Reporting Lost or Stolen Firearms.

Any person residing or doing business in West Hollywood who owns, or possesses a firearm, as defined in the Penal Code, shall report the theft or loss of the firearm to the Los Angeles County Sheriff's Department within 48 hours after his or her discovery or knowledge of the theft or loss.*

(Ord. 07-744 § 1, 2007)

View the [mobile version](#).

THE CITY OF THOUSAND OAKS, CALIFORNIA

MUNICIPAL CODE

2020 S-56 Supplement contains:

Current city legislation passed through December 31, 2019

Published by:

American Legal Publishing Corporation

One West Fourth Street, Third Floor

Cincinnati, Ohio 45202

Tel: (800) 445-5588

Fax: (513) 763-3562

Internet: <http://www.amlegal.com>

PREFACE

This Thousand Oaks Municipal Code was recodified by American Legal Publishing Corporation in January 2006.

The code arrangement is by subject matter. The ordinances are divided into Titles, chapters and sections. In parentheses following each section is a legislative history.

The code is organized under a numbering system which is designed to allow future supplementation.

This codification brings the code up to date through Ord. No. 1669-NS, eff. 1-10-20.

Sec. 5-11.03. Reporting lost or stolen firearms.

(a) Any person residing or doing business in the City, who owns or possesses a firearm, as defined in the Penal Code, shall report the theft or loss of the firearm to the Thousand Oaks Police Department within seventy-two (72) hours after his or her discovery or knowledge of the theft or loss.

(b) Any person residing or doing business in the City, who has experienced the loss or theft of a firearm, as defined in the Penal Code, in the City within the five years prior to 4/19/2007, without the firearm having been recovered during such time, shall report the theft or loss to the Thousand Oaks Police Department within ninety (90) days of 4/19/2007.

(c) Any person who fails to report a lost or stolen firearm pursuant to this Section 5-11.03, when the person knew or should have known of the theft or loss, is guilty of a misdemeanor and is punishable as provided in Section 1-2.01 of this code.

(§ 1, Ord. 1476-NS, eff. April 19, 2007)

RICHMOND MUNICIPAL CODE 1988

VOLUME I

A Codification of the General Ordinances of
Richmond, California

Beginning with Supp. No. 15,
Supplemented by Municipal Code Corporation



Municipal Code Corporation P.O. Box 2235 Tallahassee, FL 32316
info@municode.com 800.262.2633 www.municode.com

PREFACE

The Richmond, California Municipal Code, originally published by Book Publishing Company in 1963, has been kept current by regular supplementation by Matthew Bender & Company, Inc., its successor in interest.

Beginning with Supplement No. 15, Municipal Code Corporation will be keeping this code current by regular supplementation.

During original codification, the ordinances were compiled, edited and indexed by the editorial staff of Book Publishing Company under the direction of the city attorney.

The code is organized by subject matter under an expandable three-factor decimal numbering system which is designed to facilitate supplementation without disturbing the numbering of existing provisions. Each section number designates, in sequence, the numbers of the Title, chapter, and section. Thus, Section 2.12.040 is Section .040, located in Chapter 2.12 of

Title 2. In most instances, sections are numbered by tens (.010, .020, .030, etc.), leaving nine vacant positions between original sections to accommodate future provisions. Similarly, chapters and titles are numbered to provide for internal expansion.

In parentheses following each section is a legislative history identifying the specific sources for the provisions of that section. This legislative history is complemented by an ordinance disposition table, following the text of the code, listing by number all ordinances, their subjects, and where they appear in the codification; and beginning with Supplement No. 15, legislation can be tracked using the "Code Comparative Table and Disposition List."

A subject-matter index, with complete cross-referencing, locates specific code provisions by individual section numbers.

This Code is up to date through Ordinance 03-20 N.S., adopted January 14, 2020.

Municipal Code Corporation
1700 Capital Circle SW
Tallahassee, FL 32310
800-262-2633

HOW TO USE YOUR CODE

This code is organized to make the laws of the city as accessible as possible to city officials, city employees and private citizens. Please take a moment to familiarize yourself with some of the important elements of this code.

Numbering System.

The numbering system is the backbone of a Code of Ordinances; Municipal Code Corporation uses a unique and versatile numbering structure that allows for easy expansion and amendment of this Code. It is based on three tiers, beginning with title, then chapter, and ending with section. Each part is represented in the code section number. For example, Section 2.04.010 is Section .010, in Chapter 2.04 of Title 2.

Title.

A title is a broad category under which ordinances on a related subject are compiled. This code contains about 15 to 20 titles. For example, the first title is Title 1, General Provisions, which may contain ordinances about the general penalty, code adoption and definitions. The titles in this code are separated by tabbed divider pages for quick reference. Some titles are **Reserved** for later use.

Chapter.

Chapters deal with more specific subjects, and are often derived from one ordinance. All of the chapters on a related subject are grouped in one title. The chapters are numbered so that new chapters which should logically be placed near certain existing chapters can be added at a later time without renumbering existing material. For example, Chapter 2.06, City Manager, can be added between 2.04, City Council, and Chapter 2.08, City Attorney.

Section.

Each section of the code contains substantive ordinance material. The sections are numbered by "tens" to allow for expansion of the code without renumbering.

Tables of Contents.

There are many tables of contents in this code to assist in locating specific information. At the beginning of the code is the main table of contents listing each title. In addition, each title and chapter has its own table of contents listing the chapters and sections, respectively.

Ordinance History Note.

At the end of each code section, you will find an "ordinance history note," which lists the underlying ordinances for that section. The ordinances are listed by number, section (if applicable) and year. (Example: (Ord. 272 § 1, 1992).)

Beginning with Supplement No. 15, a secondary ordinance history note will be appended to affected sections. Ordinance history notes will be amended with the most recent ordinance added to the end. These history notes can be cross referenced to the code comparative table and disposition list appearing at the back of the volume preceding the index.

Statutory References.

The statutory references direct the code user to those portions of the state statutes that are applicable to the laws of the municipality. As the statutes are revised, these references will be updated.

Cross-Reference Table.

When a code is based on an earlier codification, the cross-reference table will help users find older or "prior" code references in the new code. The cross-reference table is located near the end of the code, under the tabbed divider "Tables." This table lists the prior code section in the column labeled "Prior Code Section" and the new code section in the column labeled "Herein."

As of Supplement No. 15, this table will no longer be updated.

Ordinance List and Disposition Table.

To find a specific ordinance in the code, turn to the section called "Tables" for the Ordinance List and Disposition Table. This very useful table tells you the status of every ordinance reviewed for inclusion in the code. The table is organized by ordinance number and provides a brief description and the disposition of the ordinance. If the ordinance is codified, the chapter (or chapters) will be indicated. (Example: (2.04, 6.12, 9.04).) If the ordinance is of a temporary nature or deals with subjects not normally codified, such as budgets, taxes, annexations or rezones, the disposition will be "(Special)." If the ordinance is for some reason omitted from the code, usually at the direction of the municipality, the disposition will be "(Not codified)." Other dispositions sometimes used are "(Tabled)," "(Pending)," "(Number Not Used)" or "(Missing)."

Beginning with Supplement No. 15, this table will be replaced with the "Code Comparative Table and Disposition List."

Code Comparative Table and Disposition List.

Beginning with Supplement No. 15, a Code Comparative Table and Disposition List has been added for use in tracking legislative history. Located in the back of this volume, this table is a chronological listing of each ordinance considered for codification. The Code Comparative Table and Disposition List specifies the ordinance number, adoption date, description of the ordinance and the disposition within the code of each ordinance. By use of the Code Comparative Table and Disposition List, the reader can locate any section of the code as supplemented, and any subsequent ordinance included herein.

Index.

If you are not certain where to look for a particular subject in this code, start with the index. This is an alphabetical multi-tier subject index which uses section numbers as the reference, and cross-references where necessary. Look for the main heading of the subject you need, then the appropriate subheadings:

BUSINESS LICENSE

See also BUSINESS TAX

Fee 5.04.030

Required when 5.04.010

The index will be updated as necessary when the code text is amended.

Instruction Sheet.

Each supplement to the new code will be accompanied by an Instruction Sheet. The Instruction Sheet will tell the code user the date of the most recent supplement and the last ordinance contained in that supplement. It will then list the pages that must be pulled from the code and the new pages that must be inserted. Following these instructions carefully will assure that the code is kept accurate and current. Removed pages should be kept for future reference.

Page Numbers.

When originally published, the pages of this code were consecutively numbered. As of Supplement No. 15, when new pages are inserted with amendments, the pages will follow a "Point Numbering System". (Example: 32, 32.1, 32.2, 32.2.1, 32.2.2., 33). Backs of pages that are blank (in codes that are printed double-sided) will be left unnumbered but the number will be "reserved" for later use.

Electronic Submission.

In the interests of accuracy and speed, we encourage you to submit your ordinances electronically if at all possible. We can accept most any file format, including Word, WordPerfect or text files. If you have a choice, we prefer Word, any version. You can send files to us as an e-mail attachment, by FTP, on a diskette or CD-ROM. Electronic files enable us not only to get you your code more quickly but also ensure that it is error-free. Our e-mail address is: **ords@municode.com** .

For hard copy, send two copies of all ordinances passed to:

Municipal Code Corporation
P.O. Box 2235
Tallahassee, FL 32316

Customer Service.

If you have any questions about this code or our services, please contact Municipal Code Corporation at 1-800-262-2633 or:

Municipal Code Corporation
1700 Capital Circle SW
Tallahassee, FL 32310

11.97.020 - Duty of firearm owner to report loss or theft.

- (a) Any person who owns or possesses a firearm shall report the loss or theft of the firearm to the Richmond Police Department within 48 hours of the time he or she knew or should have known that the firearm was lost or stolen, whenever the loss or theft of the firearm occurs in the City of Richmond.
- (b) A person reporting a lost or stolen firearm shall report the make, model, and serial number of the firearm, if such information is known to the person.

Sunnyvale Municipal Code							
Up	Previous	Next	Main		Search	Print	No Frames
Title 9. PUBLIC PEACE, SAFETY OR WELFARE							
Chapter 9.44. FIREARMS							

9.44.030. Duty to report theft or loss of firearms.

Any person who owns or possesses a firearm (as defined in [Penal Code](#) Section 16520 or as amended) shall report the theft or loss of the firearm to the Sunnyvale Department of Public Safety within forty-eight hours of the time he or she knew or reasonably should have known that the firearm had been stolen or lost, whenever:

(1) the person resides in the city of Sunnyvale; or (2) the theft or loss of the firearm occurs in the city of Sunnyvale. (Ord. 3027-13 § 1).

View the [mobile version](#).

9.30.010 REPORTING LOST OR STOLEN FIREARMS.

- (1) Any person that owns or is otherwise in possession of a firearm shall report the theft or loss of such firearm to the Santa Cruz police department within five calendar days of becoming aware of the theft or loss whenever: (a) the owner resides in the city of Santa Cruz; or (b) the theft or loss of the firearm occurs in the city of Santa Cruz.
- (2) The failure of an owner or person in possession of a firearm to report the theft or loss of the firearms within five calendar days of when the owner or person in possession becomes aware or should have become aware of the theft or loss shall be punishable in accordance with Section 9.30.020.
- (3) The failure of an owner or person in possession of a firearm to report the theft or loss of the firearms in a timely manner shall create a rebuttable presumption that the owner or person remains in possession of the firearm.
- (4) In order to encourage reports to law enforcement agencies of lost or stolen handguns pursuant to this section, a person who files a report with a law enforcement agency notifying the agency that a handgun has been lost or stolen shall not be subject to prosecution for violation of Section 9.29.020.

(Ord. 2015-16 § 2 (part), 2015).

MAYWOOD, CALIFORNIA - MUNICIPAL CODE

**A Codification of the General Ordinances of
the City of Maywood, California**

**Beginning with Supp. No. 3,
Supplemented by Municipal Code Corporation**



PREFACE

The Maywood Municipal Code, originally published by Book Publishing Company in 1966, has been kept current by regular supplementation by Matthew Bender & Company, Inc., its successor in interest.

Beginning with Supplement 3, Municipal Code Corporation will be keeping this code current by regular supplementation.

During original codification, the ordinances were compiled, edited and indexed by the editorial staff of Book Publishing Company under the direction of Elwayne E. Smith, city attorney.

The code is organized by subject matter under an expandable three-factor decimal numbering system which is designed to facilitate supplementation without disturbing the numbering of existing provisions. Each section number designates, in sequence, the numbers of the Title, chapter, and section. Thus, Section 2.12.040 is Section .040, located in Chapter 2.12 of Title 2. In most instances, sections are numbered by tens (.010, .020, .030, etc.), leaving nine vacant positions between original sections to accommodate future provisions. Similarly, chapters and titles are numbered to provide for internal expansion.

In parentheses following each section is a legislative history identifying the specific sources for the provisions of that section. This legislative history is complemented by an ordinance disposition table, following the text of the code, listing by number all ordinances, their subjects, and where they appear in the codification; and beginning with Supplement No. 3, legislation can be tracked using the "Code Comparative Table and Disposition List."

A subject-matter index, with complete cross-referencing, locates specific code provisions by individual section numbers.

This supplement brings the Code up to date through Ordinance 19-02, passed July 10, 2019.

Municipal Code Corporation
1700 Capital Circle SW
Tallahassee, FL 32310
800-262-2633

HOW TO USE YOUR CODE

This code is organized to make the laws of the city as accessible as possible to city officials, city employees and private citizens. Please take a moment to familiarize yourself with some of the important elements of this code.

Numbering System.

The numbering system is the backbone of a Code of Ordinances; Municipal Code Corporation uses a unique and versatile numbering structure that allows for easy expansion and amendment of this Code. It is based on three tiers, beginning with **title** , then **chapter** , and ending with **section** . Each part is represented in the code section number. For example, Section 2.04.010 is Section .010, in Chapter 2.04 of Title 2.

Title.

A title is a broad category under which ordinances on a related subject are compiled. This code contains about 15 to 20 titles. For example, the first title is Title 1, General Provisions, which may contain ordinances about the general penalty, code adoption and definitions. The titles in this code are separated by tabbed divider pages for quick reference. Some titles are **Reserved** for later use.

Chapter.

Chapters deal with more specific subjects, and are often derived from one ordinance. All of the chapters on a related subject are grouped in one title. The chapters are numbered so that new chapters which should logically be placed near certain existing chapters can be added at a later time without renumbering existing material. For example, Chapter 2.06, City Manager, can be added between 2.04, City Council, and Chapter 2.08, City Attorney.

Section.

Each section of the code contains substantive ordinance material. The sections are numbered by "tens" to allow for expansion of the code without renumbering.

Tables of Contents.

There are many tables of contents in this code to assist in locating specific information. At the beginning of the code is the main table of contents listing each title. In addition, each title and chapter has its own table of contents listing the chapters and sections, respectively.

Ordinance History Note.

At the end of each code section, you will find an "ordinance history note," which lists the underlying ordinances for that section. The ordinances are listed by number, section (if applicable) and year. (Example: (Ord. 272 § 1, 1992).)

Beginning with Supplement No. 3, a secondary ordinance history note will be appended to affected sections. Ordinance history notes will be amended with the most recent ordinance added to the end.

Statutory References.

The statutory references direct the code user to those portions of the state statutes that are applicable to the laws of the municipality. As the statutes are revised, these references will be updated.

Cross-Reference Table.

When a code is based on an earlier codification, the cross-reference table will help users find older or "prior" code references in the new code. The cross-reference table is located near the end of the code, under the tabbed divider "Tables." This table lists the prior code section in the column labeled "Prior Code Section" and the new code section in the column labeled "Herein."

As of Supplement No. 3, this table will no longer be updated.

Ordinance List and Disposition Table.

To find a specific ordinance in the code, turn to the section called "Tables" for the Ordinance List and Disposition Table. This very useful table tells you the status of every ordinance reviewed for inclusion in the code. The table is organized by ordinance number and provides a brief description and the disposition of the ordinance. If the ordinance is codified, the chapter (or chapters) will be indicated. (Example: (2.04, 6.12, 9.04).) If the ordinance is of a temporary nature or deals with subjects not normally codified, such as budgets, taxes, annexations or rezones, the disposition will be "(Special)." If the ordinance is for some reason omitted from the code, usually at the direction of the municipality, the disposition will be "(Not codified)." Other dispositions sometimes used are "(Tabled)," "(Pending)," "(Number Not Used)" or "(Missing)."

Index.

If you are not certain where to look for a particular subject in this code, start with the index. This is an alphabetical multi-tier subject index which uses section numbers as the reference, and cross-references where necessary. Look for the main heading of the subject you need, then the appropriate subheadings:

BUSINESS LICENSE

See also BUSINESS TAX

Fee 5.04.030

Required when 5.04.010

The index will be updated as necessary when the code text is amended.

Instruction Sheet.

Each supplement to the new code will be accompanied by an Instruction Sheet. The Instruction Sheet will tell the code user the date of the most recent supplement and the last ordinance contained in that supplement. It will then list the pages that must be pulled from the code and the new pages that must be inserted. Following these instructions carefully will assure that the code is kept accurate and current. Removed pages should be kept for future reference.

Page Numbers.

When originally published, the pages of this code were consecutively numbered. As of Supplement No. 3, when new pages are inserted with amendments, the pages will follow a "Point Numbering System". (Example: 32, 32.1, 32.2, 32.2.1, 32.2.2., 33). Backs of pages that are blank (in codes that are printed double-sided) will be left unnumbered but the number will be "reserved" for later use.

Electronic Submission.

In the interests of accuracy and speed, we encourage you to submit your ordinances electronically if at all possible. We can accept most any file format, including Word, WordPerfect or text files. If you have a choice, we prefer Word, any version. You can send files to us as an e-mail attachment, by FTP, on a diskette or CD-ROM. Electronic files enable us not only to get you your code more quickly but also ensure that it is error-free. Our e-mail address is: **ords@municode.com** .

For hard copy, send two copies of all ordinances passed to:

Municipal Code Corporation
P.O. Box 2235
Tallahassee, FL 32316

Customer Service.

If you have any questions about this code or our services, please contact Municipal Code Corporation at 1-800-262-2633 or:

Municipal Code Corporation
1700 Capital Circle SW
Tallahassee, FL 32310

ORDINANCE NO. 66-2

An Ordinance of the City of Maywood, California, Adopting the Maywood Municipal Code, Together with the Following Secondary Codes Therein Adopted by Reference, To Wit: That Certain Code Entitled "Fire Prevention Code", 1965 Edition, Published by the American Insurance Association, Save and Except Such Portions Thereof as Are Deleted, Modified, or Amended by the Provisions of Said Maywood Municipal Code; That Certain Code Entitled "County of Los Angeles Public Health Code", Being Los Angeles County Ordinance No. 7583, Adopted by the Board of Supervisors on August

25, 1959, Effective September 25, 1959, Including Amendments Thereto Through County Ordinance No. 8284, Effective November 8, 1962, Save and Except Such Portions Thereof as Are Deleted, Modified, or Amended by the Provisions of Said Maywood Municipal Code; That Certain Code Entitled "Uniform Building Code", 1958 Edition, Volume I, Published by the International Conference of Building Officials, Save and Except Such Portions Thereof as Are Deleted, Modified, or Amended by the Provisions of Said Maywood Municipal Code; That Certain Code Entitled "National Electrical Code", 1956 Edition, Published by the National Board of Fire Underwriters, Save and Except Such Portions Thereof as Are Deleted, Modified, or Amended by the Provisions of Said Maywood Municipal Code; and That Certain Code Entitled "Western Plumbing Officials Uniform Plumbing Code", 1958 Edition, Published by the Western Plumbing Officials Association, Save and Except Such Portions Thereof as Are Deleted, Modified, or Amended by the Provisions of Said Maywood Municipal Code; Prescribing Certain Penalties for the Violation of the Provisions Thereof; and Repealing Certain Ordinances as Specified Therein.

The Council of the City of Maywood does ordain as follows:

Sec. 1. - Adoption of the Maywood Municipal Code.

That certain document entitled "Maywood Municipal Code", including the Appendix thereto, three (3) copies of which have been filed and are on file in the office of the City Clerk for public inspection, together with the secondary codes therein adopted by reference, is hereby adopted by reference as a comprehensive ordinance Code for the City of Maywood pursuant to the provisions of Article 2 of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code of the State of California. Each and all of the provisions, terms, and penalties of said Code on file in the office of the City Clerk are hereby referred to, adopted, incorporated herein, and made a part of this ordinance as if fully set forth in this ordinance.

Sec. 2. - Repeals.

Except as otherwise provided in this ordinance and in the Maywood Municipal Code, all ordinances of the City of Maywood in force upon the effective date of this ordinance are hereby repealed.

Sec. 3. - Certain ordinances to remain in effect.

Those certain ordinances of the City of Maywood which are listed in Tables 2, 3, and 4 of the Appendix to the Maywood Municipal Code shall not be repealed by this ordinance but shall remain in full force and effect. In addition to the foregoing, Ordinance No. 609 shall remain in full force and effect pending its codification and incorporation into the Maywood Municipal Code following its adoption as modifications thereto, the incorporation and codification of said ordinance into said Code being hereby authorized and approved.

Sec. 4. - Exceptions to repeals.

No rights, obligations, duties, privileges, or encumbrances arising from any ordinance which is repealed by this ordinance relating to any of the following matters shall be affected by the repealing provisions of this ordinance or of the Maywood Municipal Code:

- (a) The public debt or the public credit;
- (b) The establishment, naming, width, grade, construction, improvement, or vacation of a public street, sidewalk, alley, or other public property or facility;
- (c) The acquisition or disposition of any interest in real or personal property;
- (d) The annexation of territory;
- (e) Any contract to which the City of Maywood is a party or any contract inuring to the City's benefit;
- (f) A municipal election;
- (g) Any appropriation or expenditure of public funds;
- (h) The levy or imposition of property taxes or fixing the tax rate;
- (i) The levy of a special benefit assessment or the creation of a lien or debt against the owner of any property or said property; or
- (j) The grant of any franchise, license, or right by the City, which franchise, license, grant, or power is legally in force and effect upon the effective date of this ordinance. Every such franchise, license, grant, or power shall expire as originally provided.

Sec. 5. - Savings provisions.

The repealing provisions of this ordinance or of the Maywood Municipal Code shall not affect or impair any act done or right vested or approved, or any proceeding, suit, or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right

vested or accrued, or proceeding, suit, or prosecution had or commenced shall remain in full force and effect to all intents and purposes as if the applicable provisions of the ordinance, or part thereof, so repealed had remained in force and effect. No offense committed and no liability, penalty, or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance, or part thereof, shall be repealed or altered by said Code, shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties, or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance, or part thereof, had not been repealed or altered.

Sec. 6. - Violation of Code.

It shall be unlawful for any person to violate any provision or fail to comply with any requirement of the Maywood Municipal Code. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of said Code shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of said Code shall be punishable by a fine of not more than Five Hundred and no/100ths (\$500.00) Dollars, or by imprisonment in the City Jail or the County Jail for a period not exceeding six (6) months, or by both such fine and imprisonment. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of said Code is committed, continued, or permitted by such person and shall be punishable accordingly.

In addition to the penalties hereinabove provided, any condition caused or permitted to exist in violation of any of the provisions of said Code shall be deemed a public nuisance and may be, by this City, summarily abated, and each day such condition continues shall be regarded as a new and separate offense.

Sec. 7. - Effective date.

The provisions of this ordinance shall take effect thirty (30) days from and after the date of the adoption hereof.

Sec. 8. - Publication.

The City Clerk of the City of Maywood shall certify to the adoption of this ordinance and cause it to be published once in the Maywood Journal.

Passed, approved, and adopted this 8th day of March, 1966.

(SEAL) /s/ JOHN P. KEARNEY, Mayor

ATTEST:

/s/ ISABEL L. DEDMORE, City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.
CITY OF MAYWOOD)

I, ISABEL L. DEDMORE, City Clerk of the City of Maywood, do hereby certify that the foregoing ordinance, being Ordinance No. 66-2, was passed by the City Council of the City of Maywood, signed by the Mayor of said City, and attested by the City Clerk, all at a regular meeting of the City Council held on the 8th day of March, 1966, and that the same was passed by the following vote, to wit:

AYES: Councilmen: AWALT, CLIFFORD, GUNNELL, ANDERSON, MAYOR KEARNEY

NAYES: Councilmen: NONE

ABSENT: Councilmen: NONE

/s/ ISABEL L. DEDMORE, City Clerk

4-4.11 - Mandatory reporting of lost or stolen firearms.

Any person residing or doing business in the City of Maywood who owns, or possesses a firearm, as defined in the California Penal Code, shall report the theft or loss of the firearm to the Maywood Police Department within forty-eight (48) hours after his or her discovery or knowledge of the theft or loss.

(§ 1, Ord. 06-536, eff. June 26, 2007)

Print

Oxnard, California Code of Ordinances

OXNARD, CALIFORNIA CODIFIED ORDINANCES

Contains 2019 S-35 Supplement
current through local legislation Ord. No. 2967, passed 10-15-19

Published by:

American Legal Publishing Corporation

One West Fourth Street, Third Floor

Cincinnati, Ohio 45202

Tel: (800) 445-5588

Fax: (513) 763-3562

Internet: <http://www.amlegal.com>

SEC. 7-141.1. REPORTING LOST OR STOLEN FIREARMS.

(A) Any person residing or doing business in the city who owns or possesses a firearm, as defined in the California Penal Code, shall report the theft or loss of the firearm to the police department within 72 hours after his or her discovery or knowledge of the theft or loss.

(B) Any person residing or doing business in the city who has experienced the loss or theft of a firearm, as defined in the California Penal Code, in the city within the five years prior to November 23, 2007, without the firearm having been recovered during such time, shall report the theft or loss to the police department within 90 days of November 23, 2007.

(Ord. No. 2757)

TIBURON MUNICIPAL CODE

**A Codification of the General Ordinances
of the Town of Tiburon, California**

**Beginning with Supp. No. 11,
Supplemented by Municipal Code Corporation**



Municipal Code Corporation P.O. Box 2235 Tallahassee, FL 32316
info@municode.com 800.262.2633 www.municode.com

PREFACE

The Tiburon Municipal Code, originally published by Book Publishing Company, has been kept current by regular supplementation by Matthew Bender & Company, Inc., its successor in interest.

Beginning with Supplement No. 11, Municipal Code Corporation will be keeping this Code current by regular supplementation.

During original codification, the ordinances were compiled, edited and indexed by the editorial staff of Book Publishing Company.

The code is organized by subject matter under an expandable three-factor decimal numbering system which is designed to facilitate supplementation without disturbing the numbering of existing provisions. Each section number designates, in sequence, the numbers of the title, chapter, and section. Thus, section 2.12.040 is section .040, located in chapter 2.12 of title 2. In most instances, sections are numbered by "tens" (.010, .020, .030, etc.), leaving nine vacant positions between original sections to accommodate future provisions. Similarly, chapters and titles are numbered to provide for internal expansion.

In parentheses following each section is a legislative history identifying the specific sources for the provisions of that section. This legislative history is complemented by an ordinance disposition table, following the text of the Code, listing by number all ordinances, their subjects, and where they appear in the codification; and beginning with Supplement No. 11, legislation can be tracked using the "Code Comparative Table and Disposition List."

A subject-matter index, with complete cross-referencing, locates specific Code provisions by individual section numbers.

This supplement brings the Code up to date through Ordinance No. 586 N.S., passed January 15, 2020.

Municipal Code Corporation
1700 Capital Circle SW
Tallahassee, FL 32310
800-262-2633

HOW TO USE YOUR CODE

This Code is organized to make the laws of the town as accessible as possible to town officials, town employees and private citizens. Please take a moment to familiarize yourself with some of the important elements of this Code.

Numbering System.

The numbering system is the backbone of a Code of Ordinances; Municipal Code Corporation uses a unique and versatile numbering structure that allows for easy expansion and amendment of this Code. It is based on three tiers, beginning with title, then chapter, and ending with section. Each part is represented in the Code section number. For example, section 2.04.010 is section .010, in chapter 2.04 of title 2.

Title.

A title is a broad category under which ordinances on a related subject are compiled. This Code contains about 15 to 20 titles. For example, the first title is Title 1, General Provisions, which may contain ordinances about the general penalty, Code adoption and definitions. The titles in this Code are separated by tabbed divider pages for quick reference. Some titles are "Reserved" for later use.

Chapter.

Chapters deal with more specific subjects, and are often derived from one ordinance. All of the chapters on a related subject are grouped in one title. The chapters are numbered so that new chapters which should logically be placed near certain existing chapters can be added at a later time without renumbering existing material. For example, Chapter 2.06, Town Manager, can be added between Chapter 2.04, Town Council, and Chapter 2.08, Town Attorney.

Section.

Each section of the Code contains substantive ordinance material. The sections are numbered by "tens" to allow for expansion of the Code without renumbering.

Tables of Contents.

There are many tables of contents in this Code to assist in locating specific information. At the beginning of the Code is the main table of contents listing each title. In addition, each title and chapter has its own table of contents listing the chapters and sections, respectively.

Ordinance History Note.

At the end of each Code section, you will find an "ordinance history note," which lists the underlying ordinances for that section. The ordinances are listed by number, section (if applicable) and year. (Example: (Ord. 272 § 1, 1992))

Beginning with Supplement No. 11, a secondary ordinance history note will be appended to affected sections. Ordinance history notes will be amended with the most recent ordinance added to the end. These history notes can be cross-referenced to the Code Comparative Table and Disposition List appearing at the back of the volume preceding the index.

Statutory References.

The statutory references direct the Code user to those portions of the state statutes that are applicable to the laws of the municipality. As the statutes are revised, these references will be updated.

Cross-Reference Table.

When a Code is based on an earlier codification, the cross-reference table will help users find older or "prior" Code references in the new Code. The cross-reference table is located near the end of the Code, under the tabbed divider "Tables." This table lists the prior Code section in the column labeled "Prior Code Section" and the new Code section in the column labeled "Herein."

As of Supplement No. 11, this table will no longer be updated.

Ordinance List and Disposition Table.

To find a specific ordinance in the Code, turn to the section called "Tables" for the Ordinance List and Disposition Table. This table tells the reader the status of every ordinance reviewed for inclusion in the Code. The table is organized by ordinance number and provides a brief description and the disposition of the ordinance. If the ordinance is codified, the chapter (or chapters) will be indicated. (Example: (2.04, 6.12, 9.04)) If the ordinance is of a temporary nature or deals with subjects not normally codified, such as budgets, taxes, annexations or rezones, the disposition will be "(Special)." If the ordinance is for some reason omitted from the Code, usually at the direction of the municipality, the disposition will be "(Not codified)." Other dispositions sometimes used are "(Tabled)," "(Pending)," "(Number Not Used)" or "(Missing)."

Beginning with Supplement No. 11, this table will be replaced with the "Code Comparative Table and Disposition List."

Code Comparative Table and Disposition List.

Beginning with Supplement No. 11, a Code Comparative Table and Disposition List has been added for use in tracking legislative history. Located in the back of this volume, this table is a chronological listing of each ordinance considered for codification. The Code Comparative Table and Disposition List specifies the ordinance number, adoption date, description of the ordinance and the disposition within the Code of each ordinance. By use of the Code Comparative Table and Disposition List, the reader can locate any section of the Code as supplemented, and any subsequent ordinance included herein.

Index.

If you are not certain where to look for a particular subject in this Code, start with the index. This is an alphabetical multi-tier subject index which uses section numbers as the reference, and cross-references where necessary. Look for the main heading of the subject you need, then the appropriate subheadings:

BUSINESS LICENSE

See also BUSINESS TAX

Fee 5.04.030

Required when 5.04.010

The index will be updated as necessary when the Code text is amended.

Instruction Sheet.

Each supplement to the new Code will be accompanied by an Instruction Sheet. The Instruction Sheet will tell the Code user the date of the most recent supplement and the last ordinance contained in that supplement. It will then list the pages that must be pulled from the Code and the new pages that must be inserted. Following these instructions carefully will assure that the Code is kept accurate and current. Removed pages should be kept for future reference.

Page Numbers.

When originally published, the pages of this Code were consecutively numbered. As of Supplement No. 11, when new pages are inserted with amendments, the pages will follow a "Point Numbering System". (Example: 32, 32.1, 32.2, 32.2.1, 32.2.2., 33). Backs of pages that are blank (in Codes that are printed double-sided) will be left unnumbered but the number will be "reserved" for later use.

Electronic Submission.

In the interests of accuracy and speed, we encourage you to submit ordinances electronically if at all possible. We can accept most any file format, including Word, WordPerfect or text files. We prefer Word, any version. You can send files to us as an e-mail attachment, by FTP, on a diskette or CD-ROM. Electronic files enable us not only to deliver the supplement more quickly but to also reduce the number of errors. Our e-mail address is: **ords@municode.com** .

For hard copy, send two copies of all ordinances passed to:

Municipal Code Corporation
P.O. Box 2235
Tallahassee, FL 32316

Customer Service.

If you have any questions about this Code or our services, please contact Municipal Code Corporation at 1-800-262-2633 or:

Municipal Code Corporation
1700 Capital Circle SW
Tallahassee, FL 32310

32-27 - Reporting of loss or theft of firearm.

It is unlawful for any person to fail to report to the police department the theft or loss of a firearm he or she owns or possesses within forty-eight hours of the time he or she knew or reasonably should have known that the firearm has been stolen or lost, if the person resides in the town or the loss or theft occurs in the town.

After July 5, 2016, it is unlawful for any person to fail to report to the police department the theft or loss of a firearm he or she owned or possessed within the five years prior to May 6, 2016 if the person resided in the town at the time of the loss or theft, or the loss or theft occurred in the town, unless the firearm has been recovered.

Pursuant to California Penal Code Section 11108, the chief of police shall submit a description of each firearm that has been reported lost or stolen directly to the California Department of Justice automated property system for firearms.

(Ord. No. 563 N.S. § 2A, 4-6-2016)

ORDINANCE NO. 1899

AN ORDINANCE OF THE CITY OF PALM SPRINGS,
CALIFORNIA, AMENDING CHAPTER 11.16 OF THE PALM
SPRINGS MUNICIPAL CODE, RELATING TO FIREARMS.

City Attorney's Summary

This Ordinance amends the City's existing provisions of the Palm Springs Municipal Code relating to weapons by imposing certain requirements related to firearms including: 1) reporting to police, within 48 hours, known loss or theft of a firearm; 2) storing firearms in residences in a locked container or disabling them with a trigger lock when not in the owner's immediate possession; and 3) requiring concealed weapon licensees to safely store firearms when left in automobiles.

SECTION 1. Chapter 11.16 of the Palm Springs Municipal Code, previously titled, "Weapons," is amended in its entirety to read:

Chapter 11.16 Firearms

11.16.005 Definitions.

"Concealed carry licensee" means a person licensed or otherwise authorized to carry a concealable firearm pursuant to California Penal Code Section 26150 *et seq.*

"Firearm" means any device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of any explosion or other form of combustion.

"Locked Container" means a secure container that is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device as defined by California Penal Code Section 16850. For purposes of this Chapter, it also includes a lock box that is listed on the California Department of Justice Bureau of Firearms roster of approved firearm safety devices. For purposes of this Chapter, it does not include a bag or other container made of fabric or other penetrable material, such as a regular purse, backpack, or gym bag.

"Residence" means any structure intended or used for human habitation, including but not limited to, houses, condominiums, rooms, motels, and time-shares. For purposes of this ordinance, it also includes a garage which is enclosed within or located adjacent to such a structure and which is not open to the public.

11.16.010 Shooting Without Permit.

It is unlawful for any person except a "peace officer" as defined in Sections 830 *et seq.*, of the Penal Code of California, as may be amended from time to time, in the performance of duties or a person acting in self-defense or in defense of others, within the city of Palm Springs, to discharge any cannon, firearm, air-gun, or any instrument of any kind, character, or description which throws or projects bullets or missiles of any kind, to any distance, by means of explosion, combustion, release of compressed air or gas, or otherwise, without first having obtained a permit to do so granted by the Chief of Police; or to make or use, any slingshot in any manner causing danger to or annoyance of any person or injury to property.

11.16.020 Shooting permit—Application—Granting—Denial.

Application for such permission shall be made in writing to the Chief of Police who shall grant such permission only if the Chief of Police determines that a substantial public interest or a compelling private need will be served thereby, and also that the shooting, if permitted cannot foreseeably result in any injury, disturbance, annoyance or hazard to any person or result in any damage to property other than that of the permittee, and further that it will in no way unnecessarily jeopardize or seriously menace the public peace, health or safety. In any case where the Chief of Police grants a permit, the Chief of Police may attach whatever conditions and terms as in his or her opinion are necessary or appropriate in order to carry out the objectives stated in this Section. No permittee exercising the privilege granted by any such permit, shall fail, refuse, or neglect to strictly comply with all conditions and terms the Chief of Police may have attached thereto.

11.16.030 Shooting Permit—Exemptions.

Sections 11.16.010 and 11.16.020 shall not apply to any peace officer, either federal, state, county, or municipal, acting in line of duty, or engaged in target practice at any range regularly established for such officers, nor to the operators or patrons of any shooting gallery, skeet club or target range holding a permit from the city building inspector and city business license for the conduct thereof.

11.16.040 Duty to Report Theft or Loss of Firearms.

Any person who owns or possesses a firearm (as defined in Penal Code Section 16520 or as amended) shall report the theft or loss of the firearm to the Police Department of the City of Palm Springs within forty-eight (48) hours of the time he or she knew or reasonably should have known that the firearm had been stolen or lost, whenever: (1) the person resides in the city of Palm Springs; or (2) the theft or loss of the firearm occurs in the City of Palm Springs.

11.16.045 Safe Storage of Firearms.

Except when carried on his or her person, or in his or her immediate control and possession, no person shall keep a firearm (as defined in Penal Code Section 16520 or as amended) in any residence owned or controlled by that person unless the firearm is stored in a locked container or the firearm is disabled with a trigger lock that is listed on the California Department of Justice's list of approved firearms safety devices.

11.16.050 Safe Storage of Firearms in an Unattended Automobile Required.

It is unlawful for persons, including those licensed or otherwise authorized to carry a concealable firearm pursuant to California Penal Code Section 26150 *et seq.*, to leave a concealable firearm or ammunition in an unattended automobile within the City of Palm Springs in a public right of way unless the firearm or ammunition is stored in a locked container or trunk.

11.16.060 Penalties and Remedies.

(a) A violation of any provision of this Chapter shall be subject to enforcement through criminal prosecution and/or civil remedies as provided herein.

(1) A person who violates this Chapter shall be guilty of a misdemeanor punishable pursuant to the provisions of Section 1.01.160 of this Code and each day or portion thereof that a person maintains and/or continues such violation to continue shall constitute a separate and subsequent offense as provided in Section 1.01.150 of this Code.

(2) The City may assess civil penalties in the amount of one thousand dollars (\$1,000.00) per violation that a person maintains and/or continues such violation to continue shall constitute a separate and subsequent offense as provided in Section 1.01.150 of this Code.

(b) Remedies under this Chapter are cumulative and not exclusive. They are in addition to and do not supersede or limit other administrative, civil, and/or criminal remedies provided under state or federal law, or other provisions of the Palm Springs Municipal Code. The City may seek an order for the award of attorney's fees.

SECTION 2. In the event that any California statute adopted or referred to in this Chapter is amended or succeeded by another enactment of the California Legislature, such amendments shall be deemed automatically adopted as part of this Chapter as if fully set forth herein unless the City Council amends this Chapter to provide otherwise.

SECTION 3. If any provision of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction within the State of California, such decision shall not affect the validity of the remaining provisions. The City Council

declares that it would have adopted the remaining provisions irrespective of the provisions, sections, sentences, clauses, or words declared invalid or unconstitutional.

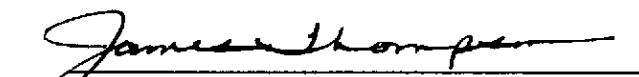
SECTION 4. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after passage.

PASSED, APPROVED, AND ADOPTED BY THE PALM SPRINGS CITY COUNCIL THIS 21ST DAY OF SEPTEMBER, 2016.



ROBERT MOON, MAYOR

ATTEST:



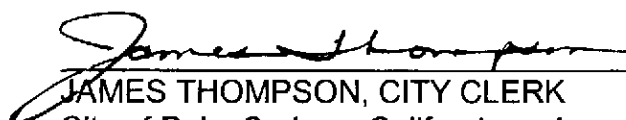
JAMES THOMPSON, CITY CLERK

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Urgency Ordinance No. 1899 is a full, true and correct copy, and was introduced at a regular meeting on the 7th day of September, 2016, and adopted at a regular meeting of the Palm Springs City Council on the 21st day of September, 2016, by the following vote:

AYES: Councilmember Kors, Councilmember Roberts, and Mayor Moon.
NOES: Councilmember Foat, and Mayor Pro Tem Mills.
ABSENT: None.
ABSTAIN: None.



JAMES THOMPSON, CITY CLERK
City of Palm Springs, California 11/06/2016

ORDINANCE NO. 1899

AN ORDINANCE OF THE CITY OF PALM SPRINGS,
CALIFORNIA, AMENDING CHAPTER 11.16 OF THE PALM
SPRINGS MUNICIPAL CODE, RELATING TO FIREARMS.

City Attorney's Summary

This Ordinance amends the City's existing provisions of the Palm Springs Municipal Code relating to weapons by imposing certain requirements related to firearms including: 1) reporting to police, within 48 hours, known loss or theft of a firearm; 2) storing firearms in residences in a locked container or disabling them with a trigger lock when not in the owner's immediate possession; and 3) requiring concealed weapon licensees to safely store firearms when left in automobiles.

SECTION 1. Chapter 11.16 of the Palm Springs Municipal Code, previously titled, "Weapons," is amended in its entirety to read:

Chapter 11.16 Firearms

11.16.005 Definitions.

"Concealed carry licensee" means a person licensed or otherwise authorized to carry a concealable firearm pursuant to California Penal Code Section 26150 *et seq.*

"Firearm" means any device, designed to be used as a weapon, from which is expelled through a barrel, a projectile by the force of any explosion or other form of combustion.

"Locked Container" means a secure container that is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device as defined by California Penal Code Section 16850. For purposes of this Chapter, it also includes a lock box that is listed on the California Department of Justice Bureau of Firearms roster of approved firearm safety devices. For purposes of this Chapter, it does not include a bag or other container made of fabric or other penetrable material, such as a regular purse, backpack, or gym bag.

"Residence" means any structure intended or used for human habitation, including but not limited to, houses, condominiums, rooms, motels, and time-shares. For purposes of this ordinance, it also includes a garage which is enclosed within or located adjacent to such a structure and which is not open to the public.

11.16.010 Shooting Without Permit.

It is unlawful for any person except a "peace officer" as defined in Sections 830 *et seq.*, of the Penal Code of California, as may be amended from time to time, in the performance of duties or a person acting in self-defense or in defense of others, within the city of Palm Springs, to discharge any cannon, firearm, air-gun, or any instrument of any kind, character, or description which throws or projects bullets or missiles of any kind, to any distance, by means of explosion, combustion, release of compressed air or gas, or otherwise, without first having obtained a permit to do so granted by the Chief of Police; or to make or use, any slingshot in any manner causing danger to or annoyance of any person or injury to property.

11.16.020 Shooting permit—Application—Granting—Denial.

Application for such permission shall be made in writing to the Chief of Police who shall grant such permission only if the Chief of Police determines that a substantial public interest or a compelling private need will be served thereby, and also that the shooting, if permitted cannot foreseeably result in any injury, disturbance, annoyance or hazard to any person or result in any damage to property other than that of the permittee, and further that it will in no way unnecessarily jeopardize or seriously menace the public peace, health or safety. In any case where the Chief of Police grants a permit, the Chief of Police may attach whatever conditions and terms as in his or her opinion are necessary or appropriate in order to carry out the objectives stated in this Section. No permittee exercising the privilege granted by any such permit, shall fail, refuse, or neglect to strictly comply with all conditions and terms the Chief of Police may have attached thereto.

11.16.030 Shooting Permit—Exemptions.

Sections 11.16.010 and 11.16.020 shall not apply to any peace officer, either federal, state, county, or municipal, acting in line of duty, or engaged in target practice at any range regularly established for such officers, nor to the operators or patrons of any shooting gallery, skeet club or target range holding a permit from the city building inspector and city business license for the conduct thereof.

11.16.040 Duty to Report Theft or Loss of Firearms.

Any person who owns or possesses a firearm (as defined in Penal Code Section 16520 or as amended) shall report the theft or loss of the firearm to the Police Department of the City of Palm Springs within forty-eight (48) hours of the time he or she knew or reasonably should have known that the firearm had been stolen or lost, whenever: (1) the person resides in the city of Palm Springs; or (2) the theft or loss of the firearm occurs in the City of Palm Springs.

11.16.045 Safe Storage of Firearms.

Except when carried on his or her person, or in his or her immediate control and possession, no person shall keep a firearm (as defined in Penal Code Section 16520 or as amended) in any residence owned or controlled by that person unless the firearm is stored in a locked container or the firearm is disabled with a trigger lock that is listed on the California Department of Justice's list of approved firearms safety devices.

11.16.050 Safe Storage of Firearms in an Unattended Automobile Required.

It is unlawful for persons, including those licensed or otherwise authorized to carry a concealable firearm pursuant to California Penal Code Section 26150 *et seq.*, to leave a concealable firearm or ammunition in an unattended automobile within the City of Palm Springs in a public right of way unless the firearm or ammunition is stored in a locked container or trunk.

11.16.060 Penalties and Remedies.

(a) A violation of any provision of this Chapter shall be subject to enforcement through criminal prosecution and/or civil remedies as provided herein.

(1) A person who violates this Chapter shall be guilty of a misdemeanor punishable pursuant to the provisions of Section 1.01.160 of this Code and each day or portion thereof that a person maintains and/or continues such violation to continue shall constitute a separate and subsequent offense as provided in Section 1.01.150 of this Code.

(2) The City may assess civil penalties in the amount of one thousand dollars (\$1,000.00) per violation that a person maintains and/or continues such violation to continue shall constitute a separate and subsequent offense as provided in Section 1.01.150 of this Code.

(b) Remedies under this Chapter are cumulative and not exclusive. They are in addition to and do not supersede or limit other administrative, civil, and/or criminal remedies provided under state or federal law, or other provisions of the Palm Springs Municipal Code. The City may seek an order for the award of attorney's fees.


SECTION 2. In the event that any California statute adopted or referred to in this Chapter is amended or succeeded by another enactment of the California Legislature, such amendments shall be deemed automatically adopted as part of this Chapter as if fully set forth herein unless the City Council amends this Chapter to provide otherwise.

SECTION 3. If any provision of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction within the State of California, such decision shall not affect the validity of the remaining provisions. The City Council

declares that it would have adopted the remaining provisions irrespective of the provisions, sections, sentences, clauses, or words declared invalid or unconstitutional.

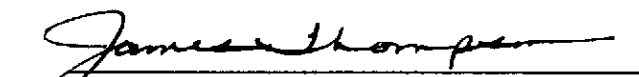
SECTION 4. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after passage.

PASSED, APPROVED, AND ADOPTED BY THE PALM SPRINGS CITY COUNCIL THIS 21ST DAY OF SEPTEMBER, 2016.



ROBERT MOON, MAYOR

ATTEST:




JAMES THOMPSON, CITY CLERK

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Urgency Ordinance No. 1899 is a full, true and correct copy, and was introduced at a regular meeting on the 7th day of September, 2016, and adopted at a regular meeting of the Palm Springs City Council on the 21st day of September, 2016, by the following vote:

AYES: Councilmember Kors, Councilmember Roberts, and Mayor Moon.
NOES: Councilmember Foat, and Mayor Pro Tem Mills.
ABSENT: None.
ABSTAIN: None.



JAMES THOMPSON, CITY CLERK
City of Palm Springs, California 11/06/2016

EXHIBIT 11



Special - Regular Meeting Agenda
City Council

Steve Tate - Mayor
Rich Constantine - Mayor Pro Tem
Larry Carr - Council Member
Caitlin Jachimowicz - Council Member
Rene Spring - Council Member

Wednesday, October 24, 2018 5:30 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:30 p.m. for the purpose of conducting a Joint City Council/Planning Commission Workshop.

SPECIAL MEETING

5:30 P.M.

CALL TO ORDER

(Mayor Tate)

ROLL CALL ATTENDANCE

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
(Deputy City Clerk Bigelow)

WORKSHOP

MONTEREY CORRIDOR BLOCK-LEVEL MASTER PLAN JOINT CITY COUNCIL/PLANNING COMMISSION WORKSHOP

Recommendation:

1. Continue presentation on the Monterey Corridor Block-Level Master Plan;
2. Discuss and provide feedback on draft frontage standards for future development along the Monterey Corridor; and
3. Discuss and provide feedback on the results and recommendations of the block-level commercial analysis.

REGULAR MEETING

7:00 P.M.

The City Council has adopted a policy that regular meetings shall not continue beyond 11:00 p.m. unless extended by a majority of the City Council.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Jachimowicz

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PROCLAMATION

Proclaiming November 2018 as Morgan Hill Community Philanthropy Month
Pamela Meador

PRESENTATION

Morgan Hill Downtown Association Board Presentation of Contribution Check
for the Downtown Twinkle Lights

PUBLIC COMMENT

Members of the public are entitled to address the City Council concerning any item within the Morgan Hill City Council's subject matter jurisdiction. Public comments are limited to no more than three minutes. Except for certain specific exceptions, the City Council is prohibited from discussing or taking action on any item not appearing on the posted agenda. (See additional noticing at the end of this agenda)

ADOPTION OF AGENDA

October 24, 2018

CONSENT CALENDAR

Items appearing on the Consent Calendar are considered routine and may be approved by one motion. Pursuant to City Council Policies and Procedures (CP 97-01), any member of the Council or public may request to have an item removed from the Consent Calendar for comment and action.

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. **ADOPT ORDINANCE APPROVING A DEVELOPMENT AGREEMENT DA2017-0008: LLAGAS-STROLATA (SILVA) FOR A 3-UNIT RESIDENTIAL DEVELOPMENT WITH REMAINDER LOT ON A 4.48-ACRE SITE LOCATED AT 1110 LLAGAS AVENUE (APN 773-32-013)**

Recommendation:

Waive the reading, adopt Ordinance No. 2286, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

2. **ADOPT ORDINANCE APPROVING A DEVELOPMENT AGREEMENT FOR A 389 UNIT APARTMENT PROJECT ON APPROXIMATELY 19.5 ACRES AT JARVIS DR. AND MONTEREY ROAD**

Recommendation:

Waive the reading, adopt Ordinance No. 2287, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

3. **ADOPT ORDINANCE ADDING NEW CHAPTER 14.08 "IN-LIEU HOUSING FEE" TO TITLE 14 (HOUSING) OF THE MORGAN HILL MUNICIPAL CODE, ESTABLISHING IN-LIEU FEES FOR NEW RESIDENTIAL DEVELOPMENT OWNERSHIP AND RENTAL PROJECTS WITHIN THE CITY AND ADDING CHAPTER 14.12 "BELOW MARKET RATE PROGRAM" WHICH INCORPORATES A NEW BELOW MARKET RATE OWNERSHIP PROGRAM PARTICIPATION GUIDE AND A NEW BELOW MARKET RATE OWNERSHIP PROGRAM APPLICATION GUIDE, AND REPEALING CHAPTERS 15.22 "AFFORDABLE HOUSING FEE" AND 15.23 "BELOW MARKET RATE PROGRAM"**

Recommendation:

Waive the reading, adopt Ordinance No. 2288, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

PUBLIC HEARING

4. ADOPT AN ORDINANCE REQUIRING SAFE STORAGE OF FIREARMS, REPORTING THEFT OR LOSS OF FIREARMS, AND PROHIBITING POSSESSION OF LARGE CAPACITY MAGAZINES

Recommendation:

1. Open/close public hearing;
2. Waive the first and second reading of the ordinance; and
3. Introduce the ordinance amending Chapter 9.04 titled "Weapons," to require the safe storage of firearms when not attended, to require the reporting of the theft or loss of firearms, and to prohibit the possession of large capacity magazines.

Estimated Time: 75 Minutes

5. ZA2018-0005: CITY OF MORGAN HILL - AN AMENDMENT TO TITLE 18, DIVISION I ZONING CODE, PART 2 ZONING DISTRICTS, CHAPTER 18.28 - OPEN SPACE, PUBLIC, AND RECREATION ZONING DISTRICTS TO MODIFY THE USES ALLOWED IN THE SRL-B - SPORTS RECREATION AND LEISURE SUB-ZONE B ZONING DISTRICT, OF THE MORGAN HILL MUNICIPAL CODE

Recommendation:

1. Open/close public hearing;
2. Waive the first and second reading of Zoning Amendment ZA2018-0005: City of Morgan Hill Ordinance; and
3. Introduce Zoning Amendment ZA2018-0005: City of Morgan Hill Ordinance.

Estimated Time: 30 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

Note: in accordance with Government Code Section 54954.2(a), there shall be no discussion, debate and/or action taken on any request other than providing direction to staff to place the matter of business on a future agenda.

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Authority: Government Code 54957(b)(1)

Title: City Manager

CLOSED SESSION SUPPLEMENT 1

CLOSED SESSION SUPPLEMENT 2

RECONVENE

CLOSED SESSION ANNOUNCEMENT

ADJOURNMENT

NOTICE

Any documents produced by the City and distributed to the majority of the City Council less than 72 hours prior to an open meeting, will be made available for public inspection at the City Clerk's Counter at City Hall located at 17575 Peak Avenue, Morgan Hill, CA, 95037 and at the Morgan Hill Public Library located at 660 West Main Avenue, Morgan Hill, California, 95037 during normal business hours. (Pursuant to Government Code 54957.5)

PUBLIC COMMENT

Members of the Public are entitled to directly address the City Council concerning any item that is described in the notice of this meeting, before or during consideration of that item. If you wish to address the Council on any issue that is on this agenda, please complete a speaker request card located in the foyer of the Council Chambers and deliver it to the Minutes Clerk prior to discussion of the item. You are not required to give your name on the speaker card in order to speak to the Council, but it is very helpful. When you are called, proceed to the podium and the Mayor will recognize you. If you wish to address the City Council on any other item of interest to the public, you may do so during the public comment portion of the meeting following the same procedure described above. Please limit your comments to three (3) minutes or less.

Please submit written correspondence to the Minutes Clerk, who will distribute correspondence to the City Council.

Persons interested in proposing an item for the City Council agenda should contact a member of the City Council who may plan an item on the agenda for a future City Council meeting. Should your comments require Council action, your request may be placed on the next appropriate agenda. Council discussion or action may not be taken until your item appears on an agenda. This procedure is in compliance with the California Public Meeting Law (Brown Act) Government Code §54950.

City Council Policies and Procedures (CP 03-01) outlines the procedure for the conduct of public hearings. Notice is given, pursuant to Government Code Section 65009, that any challenge of Public Hearing Agenda items in court, may be limited to raising only those issues raised by you or on your behalf at the Public Hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to the Public Hearing on these matters.

The time within which judicial review must be sought of the action by the City Council, which acted upon any matter appearing on this agenda is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure.

For a copy of City Council Policies and Procedures CP 97-01, please contact the City Clerk's office (408) 779-7259, (408) 779-3117 (fax) or by email michelle.wilson@morganhill.ca.gov.

AMERICANS WITH DISABILITIES ACT (ADA)

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, please contact the City Clerk's Office at (408)779-7259, (408)779-3117 (fax) or by email michelle.wilson@morganhill.ca.gov. Requests must be made as early as possible and at least two-full business days before the start of the meeting.



Sustainable Morgan Hill Vision

Morgan Hill is a safe, inclusive, socially responsible, environmentally conscious, and economically sound community.

CITY COUNCIL ONGOING PRIORITIES

Enhancing Public Safety · Protecting the Environment · Maintaining Fiscal Responsibility ·
Supporting Our Youth, Seniors, and Entire Community · Fostering a Positive Organizational Culture ·
Preserving and Cultivating Public Trust · Preserving Our Cultural Heritage ·
Enhancing Diversity and Inclusiveness

2018 STRATEGIC PRIORITIES

Community Engagement and Messaging

Economic Development and Telecommunications

Financial Stewardship

Infrastructure

Regional Initiatives

2018 STRATEGIC PRIORITIES:



Community Engagement and Messaging

The City of Morgan Hill will tell our story through outreach and by working closely with our community in presenting our vision, priorities, and financial needs, and by engaging citizens and business owners to find affordable and sustainable solutions. The City's communications, services, public spaces, and projects will embrace all community members as partners, encouraging public participation.



Economic Development and Telecommunications

The Economic Blueprint will continue to be implemented, with a primary goal of attracting jobs and investment into our community. The City will collaborate with the private sector to explore ways to provide fast, reliable access and wireless connectivity for residents and businesses. The 2016 Telecommunications Infrastructure and Economic Blueprint reports will be the foundation for continuing discussions with broadband providers, public utilities, and other infrastructure service providers in developing an implementation plan for growing our telecommunications infrastructure with private sector partnerships. The plan will be used to signal Morgan Hill's support for business expansion.



Financial Stewardship

We will be financial stewards of the City's assets to ensure long-term fiscal sustainability. New revenue sources, including a possible tax measure, will be considered to fund increasing costs to deliver services and complete infrastructure projects. The City will closely manage its expenditures to maintain its general fund reserve. The labor contracts will be negotiated using the City's adopted Employee Compensation Guiding Principles.



Infrastructure

The City will review its streets, parks, and public facilities infrastructure needs to quantify the funding gap. We will identify potential funding options as ongoing revenue is insufficient to fund our vital community assets at a sustainable level without significantly impacting existing service levels that our community has come to expect. Morgan Hill will actively work with the Valley Transportation Agency, the County, and the State to secure funding for transportation projects and road maintenance. For High Speed Rail, we will strongly advocate for the route with the least impact on Morgan Hill.



Regional Initiatives

City Council and staff will focus on influencing regional decisions that benefit Morgan Hill. A regional approach will be employed to address many priorities, including but not limited to, homelessness, animal services, teen suicide, High Speed Rail, and land use (Catholic High School, Outdoor Sports Center, agricultural preservation, and city limits). This regional involvement will include partnering with the League of California Cities, Valley Transportation Authority, Caltrain, Santa Clara Valley Water District, Cities Association of Santa Clara County, the City of Gilroy, Santa Clara County, Morgan Hill Unified School District, the Local Agency Formation Commission, the Open Space Authority, and Silicon Valley Clean Energy to advance projects that further Sustainable Morgan Hill.



CITY COUNCIL STAFF REPORT

MEETING DATE: October 24, 2018

PREPARED BY: John Baty, Principal Planner/Development Services
APPROVED BY: City Manager

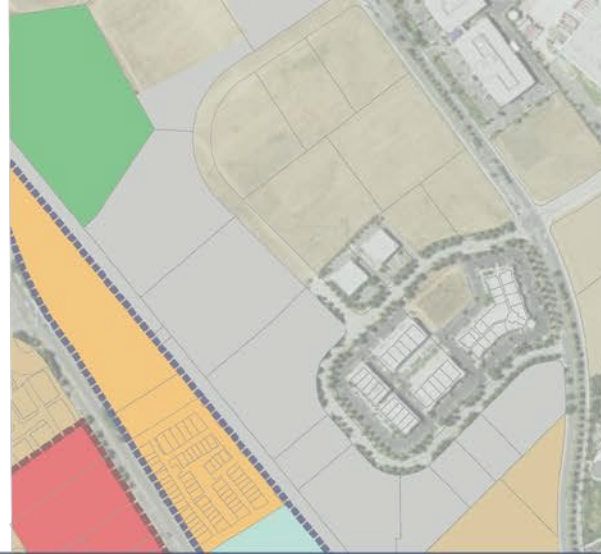
MONTEREY CORRIDOR BLOCK-LEVEL MASTER PLAN JOINT CITY COUNCIL/PLANNING COMMISSION WORKSHOP

RECOMMENDATION(S)

1. Continue presentation on the Monterey Corridor Block-Level Master Plan;
2. Discuss and provide feedback on draft frontage standards for future development along the Monterey Corridor; and
3. Discuss and provide feedback on the results and recommendations of the block-level commercial analysis.

LINKS/ATTACHMENTS:

1. Workshop Presentation
2. Monterey Corridor Block-Level Master Plan
3. Letter from John Kent
4. 00 Workshop Supplement 1

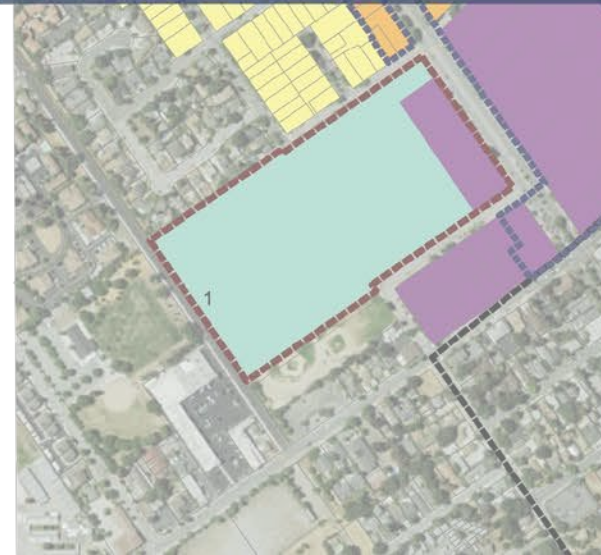
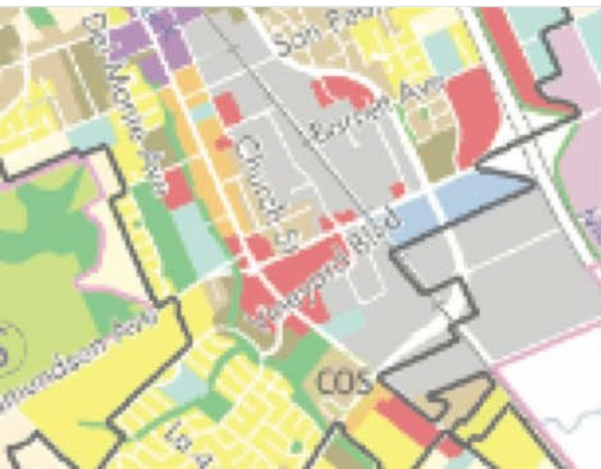


a

CITY OF MORGAN HILL

Monterey Corridor Block Level Master Plan - Public Workshop

October 17, 2018



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Agenda

a

Overview & Background
Commercial Analysis
Draft Frontage Standards
Questions & Comments

Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Overview & Background

Introductions

a

City of Morgan Hill

John Baty, Principal Planner

Lisa Wise Consulting, Inc.

Lisa Wise, AICP, President

Jen Daugherty, AICP, Senior
Associate

Spencer Johnson, CNU-A, Associate

Metrovation Brokerage and Consulting

Christine Firstenberg, Principal

Background

General Plan Update (2016)

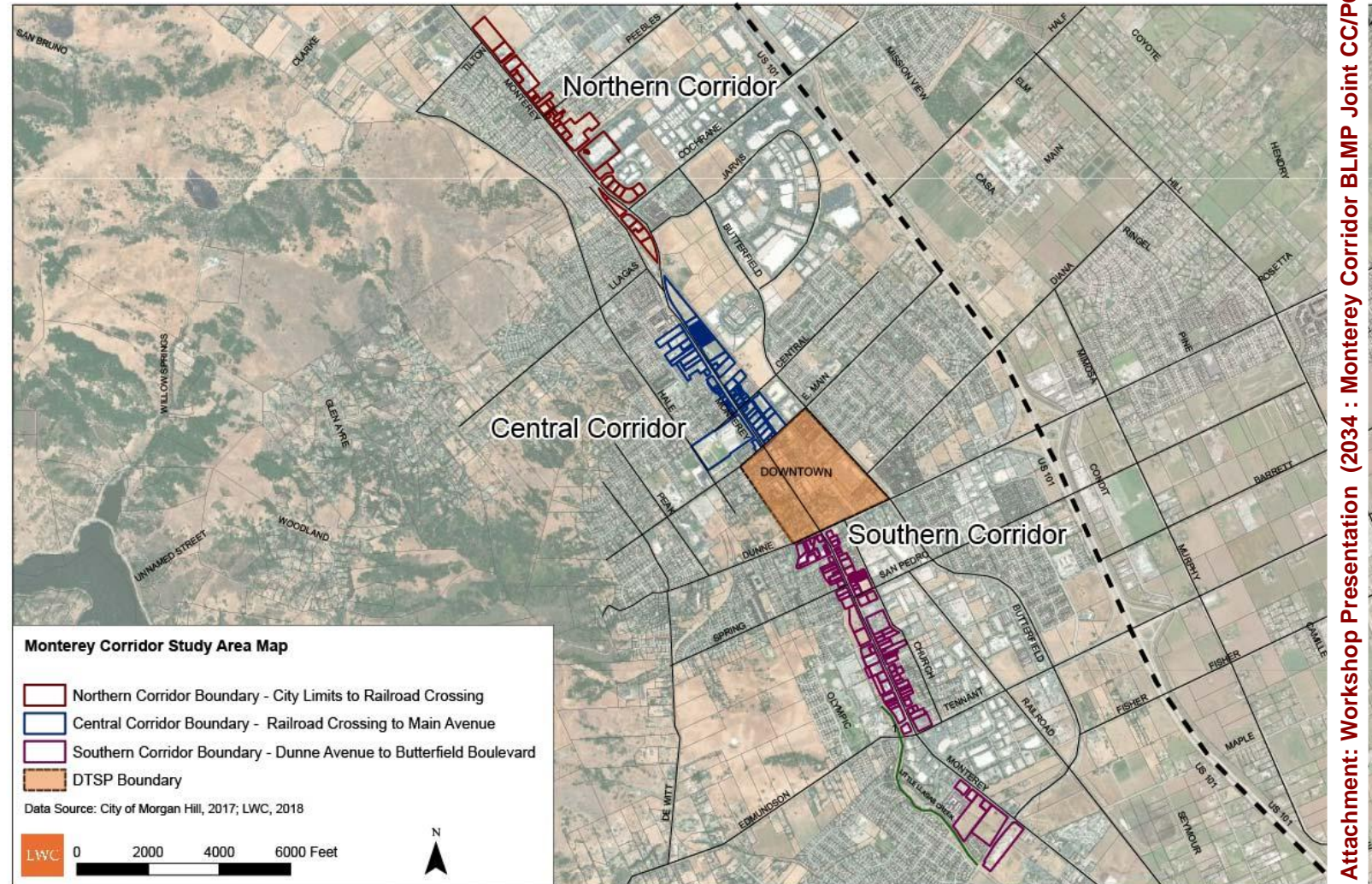
- Mixed Use Flex Land Use
- Monterey Corridor- Vibrant, walkable mixed-use

Zoning Code Update (2018)

- Mixed Use Flex (MU-F) Zone

Land Use and Market Analysis (2017-2018)

- Land Use Inventory
- Market Analysis
- Recommendations



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Land Use and Market Analysis

a

Key Findings

- Retail
 - Current retail market stable, but...
- Office
 - Cool/stable office market
- Residential
 - Residential is most highly favored

Commercial Capacity

- 600,000 – 1.5 million sf of physical capacity
- 215,000 sf theoretical commercial market demand*
- * Based on a relatively stable future market



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

697

Land Use and Market Analysis

a

Conclusions

- Zone for fluctuating market conditions
- Strategically locate commercial
 - Additional analysis for retail viability and siting
- Standards for revitalization
 - Building frontage standards
 - High-quality public space
- Allow “Missing Middle” housing
- Streamline projects supporting mixed-use



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

698

Council Recommendation

a

BLOCK LEVEL MASTER PLAN (SHORT-TERM)

- City-led effort with developer/property owner buy-in
- Work towards long-term goal of a specific plan and form-based code
- Supplemental standards
 - Well-designed buildings (frontage standards)
 - Connectivity
 - Preserve retail-viable parcels

SPECIFIC PLAN (LONG-TERM)

- Develop vision, goals, policies, and implementation measures
- Include a form-based code
- CEQA clearance for future projects
- Community buy-in

Note: Limitations of RDCS applies to development in the Mixed Use Flex designation

Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

699

Block Level Master Plan

a



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Commercial Analysis



BROKERAGE & CONSULTING

Block Level Master Plan for Monterey Rd. Morgan Hill, CA

Christine Firstenberg

Lic # 00973135

Retail Real Estate Resources, Principal
Metrovation Brokerage

Lic # 01780115

925-381-8666

christine@cfirstenberg.com

Executive Summary

As we read newspaper articles describing our current era as the age of the “Retail Apocalypse”, many cities are struggling with how to plan for retail in the future. Will it look like it does now with anchor and shop tenants, will it look more like industrial space with delivery cars in front, or will it exist at all?

In California, most cities receive a percentage of their general funds from sales taxes that occur within their city limits. With recent national legislation, online sales will start to generate sales tax to the cities where the person who paid for the items lives. Exactly how those sales taxes will be allocated is not completely known, but we understand that retail sales leakage numbers will show change.

While brick and mortar store locations will continue to diminish in total square footage, we will continue to see new online retail ventures expand and will continue to need retail for its experiential contribution to our lives. It is the only real estate category that can create a “sense of place” and community for a City.

Retail is one of the three categories within the industry categorization of commercial real estate. While all types of commercial (retail, office and industrial) real estate uses can contribute to the overall economic engines of a community, retail is the only category that we think of when desiring a “sense of place” in our communities. Much of the new, emerging small businesses, which are the building block of the American middle class, locate their new ventures in retail real estate, although many can start within an office or industrial footprint.

We have seen cities in California, and other states, that believe “if you build it, they will come” when it comes to retail spaces. We have all seen the many examples of residential buildings where retail spaces were required on the ground floor by city zoning, and in many cases those spaces never get leased.

Because long term vacant spaces (vacant for years) can cause blight in communities, we want to be careful about requiring retail where it is not necessarily appropriate.

METR@VATION

Executive Summary

How to determine which parcels of land should require retail or any of the commercial categories, and which parcels of land should not, is a question the City of Morgan Hill staff has pondered. Morgan Hill's staff are light years ahead of many other cities in that they not only asked the question, they assigned the task to be determined.

Retail thrives when there is an intensity of activity – either car or pedestrian. But that hive of activity must exist prior to the retail space being activated otherwise the retail can fail. Building retail spaces in clearly residential and or quiet, non-active areas, and assuming the space will get leased is like wishing on a star. Many planners believe you should create retail spaces to activate the streets, but that thinking is backwards. Because it isn't the retail spaces that activate the streets, it is what is in the retail spaces themselves. It is the retailer/small businesses. The retail/ small businesses that make their living off the sales volumes done out of retail spaces are important to the activity in a neighborhood or district. But if there is no neighborhood or district activity before the retailer opens, often a retailer's sales fall flat.

That is the challenge in determining where to locate for a retailer and building a retail base in a city...*how do you create the activity before a retailer opens if we depend upon a retailer to create the activity?*

That is why we use retail criteria to help retailers review the data from which to make a location decision. It is strongly suggested that all retailers use basic retail criteria to determine if a space or an area will ultimately be sustainable. And from a City's perspective, retail criteria needs to be met for retail spaces to get leased.

RETAIL CRITERIA:

Retail businesses do better at intersections (corners) - not mid-block- because at intersections, there are two roads converging with double the traffic (whether pedestrian or car) of a mid block location.

Executive Summary

Retail typically requires **access**, an ability to have all turns, meaning you can get in and out of the property using left turns, not just right turns.

Retail needs to be seen by the customers, therefore **signage** is important, both storefront signage and any additional blade, or monument signs.

Retail needs to be **convenient**, so a customer can easily fit a visit to the retail store into their busy lives.

And finally, retail needs **parking**, yes parking, unless of course you have a tremendous pedestrian count like in downtown San Francisco.

This is the retail criteria used when we looked at intersections in Morgan Hill.

APPLICATION FOR MORGAN HILL:

As mentioned earlier, much of the new, emerging small businesses, which are the building block of the American middle class, locate their new ventures in retail real estate, although many can start within an office or industrial (commercial) footprint also.

As we analyzed the corners and intersections along Monterey Rd. we used the more liberal “commercial” categorization, with which to consider the viability and sustainability of the corner. This category can include an office tenant like a building contractor, or a mortgage office, a realtor or travel agency, a CPA firm or lawyers office. Many typical office tenants like a more prominent corner location that provides signage.

Commercial categorization also includes industrial.

Executive Summary

a

Industrial tenancies, often more service oriented, are more common in today's world as many start up retailers and businesses need the additional size for delivery preparation to compete with the fast paced delivery requirements retail customers currently demand. More traditional industrial tenants include auto parts, medical facilities, dental clinics and veterinarian shops.

Therefore a suggestion of commercial only zoning would allow all of the sub-categories of commercial listed earlier.

While some of the zoning along the Monterey Rd. corridor allows for "Mixed Use-Flex" we strongly suggest the City consider this zoning allow a horizontal mixture of uses versus only a vertical mixture of uses on the parcel.

Vertical mixed use has become a challenge to build in the Bay Area over the last few years due to the massive increase in construction costs. While vertical mixed use is often considered a quick way to densify an area, it can often have unintended consequences many of which can result in a parcel not being developed for many, many years, -- missing an economic cycle it otherwise would have enjoyed.

Lastly, in the retail real estate industry, we never say never, as retail is fluid and does not depends on a business owners decision on where to locate, but on the sales produced at a location.

Customers are what create the final success of a location for a retail business. And, as the saying goes, *"The customer is always right"*.

METR@VATION

706

Packet Pg. 23

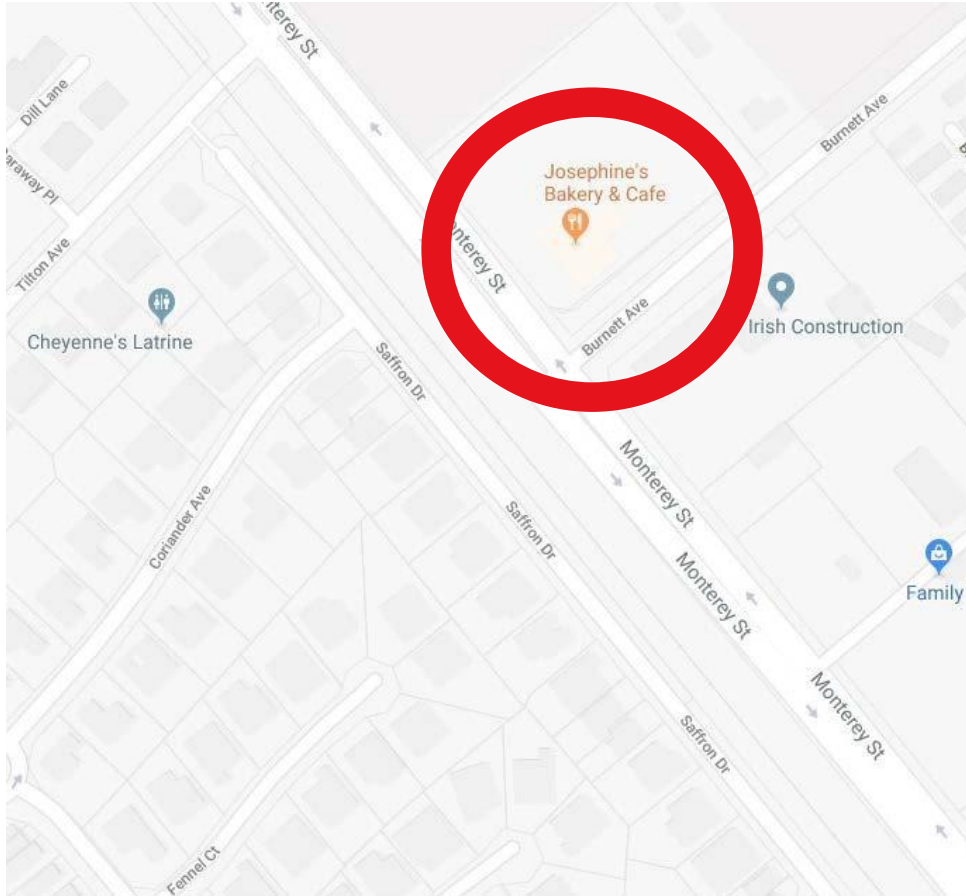
BROKERAGE & CONSULTING

Block 1 –

City Limits to Burnett Ave.

NE Corner Burnett Ave. & Monterey Rd.

a



Burnett Ave. has a strong east/west presence making it a logical candidate to create a commercial and retail presence at the intersection with Monterey Rd. However, due to the rail line running north/south along the western edge of Monterey Road, the residential community west of the rail line will be blocked and despite Burnett Ave.'s future extension across Monterey Rd. connecting it to Tilton, the synergy to that corner is lost. There is no reason to add development restrictions on a site that will never have a 360-degree potential. Therefore, we do not support a requirement for commercial zoning on this corner.



Conclusion: Commercial is unlikely to be sustainable on this corner, therefore, should not be required.

METROVATION

707

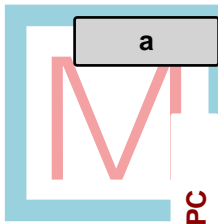
Packet Pg. 24

BROKERAGE & CONSULTING

Block 1 –

City Limits to Burnett Ave.

NE Corner Burnett Ave. & Monterey Rd.

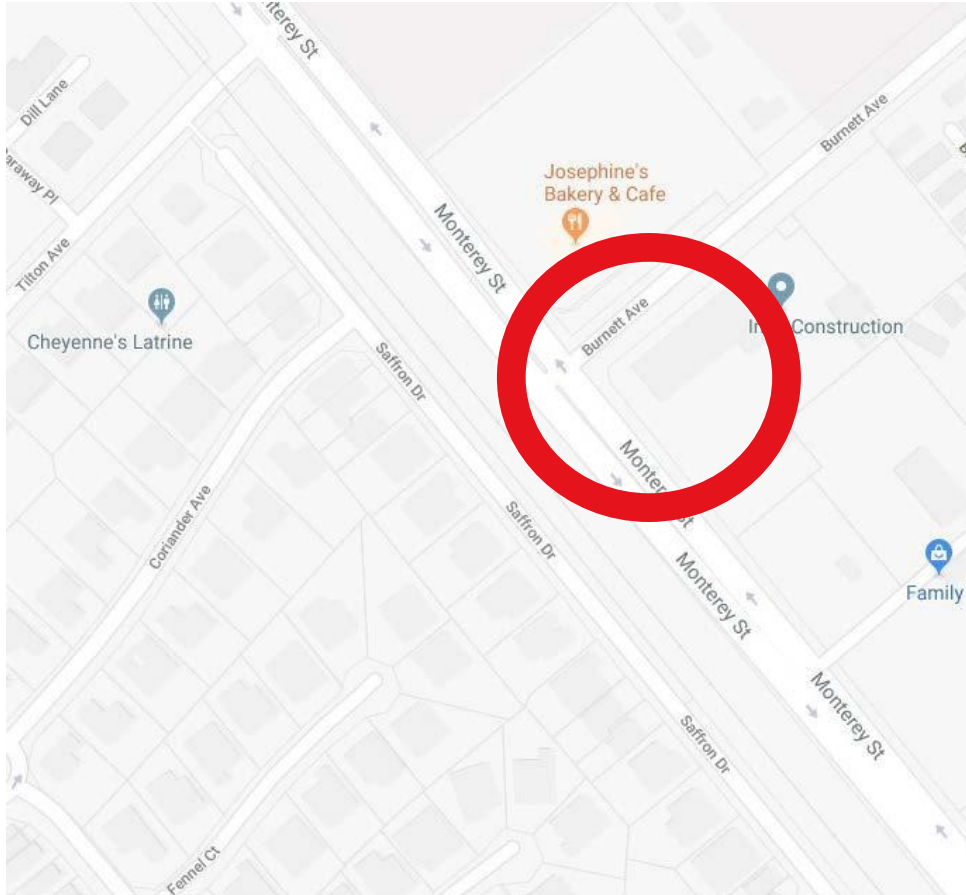


Block 2 –

Burnett Ave. to Peebles Ave.

SE Corner Burnett Ave. & Monterey Rd.

a



Block 2's Northern Site is located at the terminus of Burnett Ave. at Monterey Rd. and is currently partially occupied by Irish Construction. The location of the rail line will prevent the possibility of generating any connectivity to uses or residential across the street. Block 2, site 1, will never achieve the kind of synergy that a commercial zoning requirement is looking to accomplish. Therefore, we do not recommend a requirement for commercial here. Instead, allow market forces to dictate the development of the site.



Conclusion: Commercial is unlikely to be sustainable on this corner, therefore, should not be required.

METROVATION

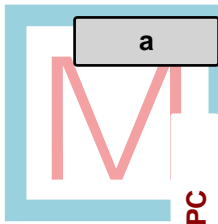
709

Packet Pg. 26

BROKERAGE & CONSULTING

Block 2 –

Burnett Ave. to Peebles Ave.
SE Corner Burnett Ave. & Monterey Rd.



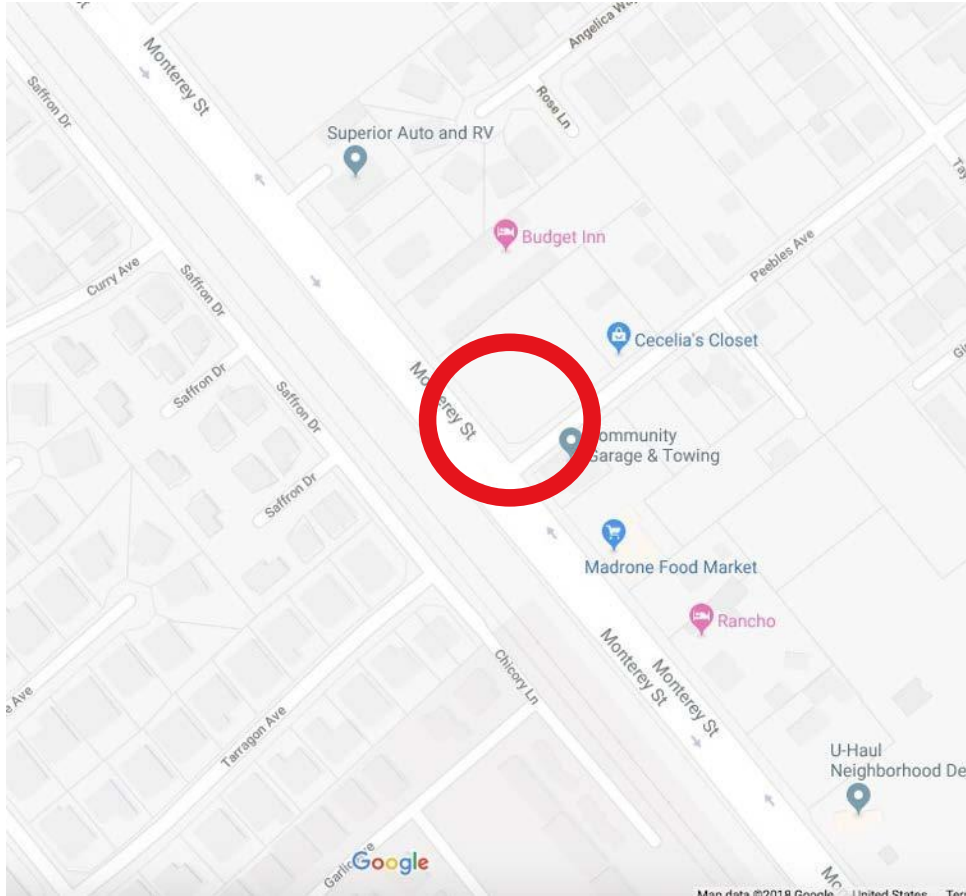
Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Block 2 –

Burnett Ave. to Peebles Ave.

NE Corner Peebles Ave. & Monterey Rd.

a



Block 2's Southern Site has similar challenges as the Northern Site although it has single-family homes located directly behind the parcel creating a possible opportunity. Nearly all of the residential traffic patterns use Peebles Ave. as a main thoroughfare. Morning commuters in this neighborhood will use Peebles to drive out to Monterey Rd, go south on Monterey Rd, to Cochrane to get to the freeway.

Often, a small, (3000 sf building) multi-tenant retail building, works well at this type of corner due to the commercially restricted access of the surrounding residential neighborhood.



Conclusion: Commercial is viable, therefore can be allowed, but should not be required.

METROVATION

711

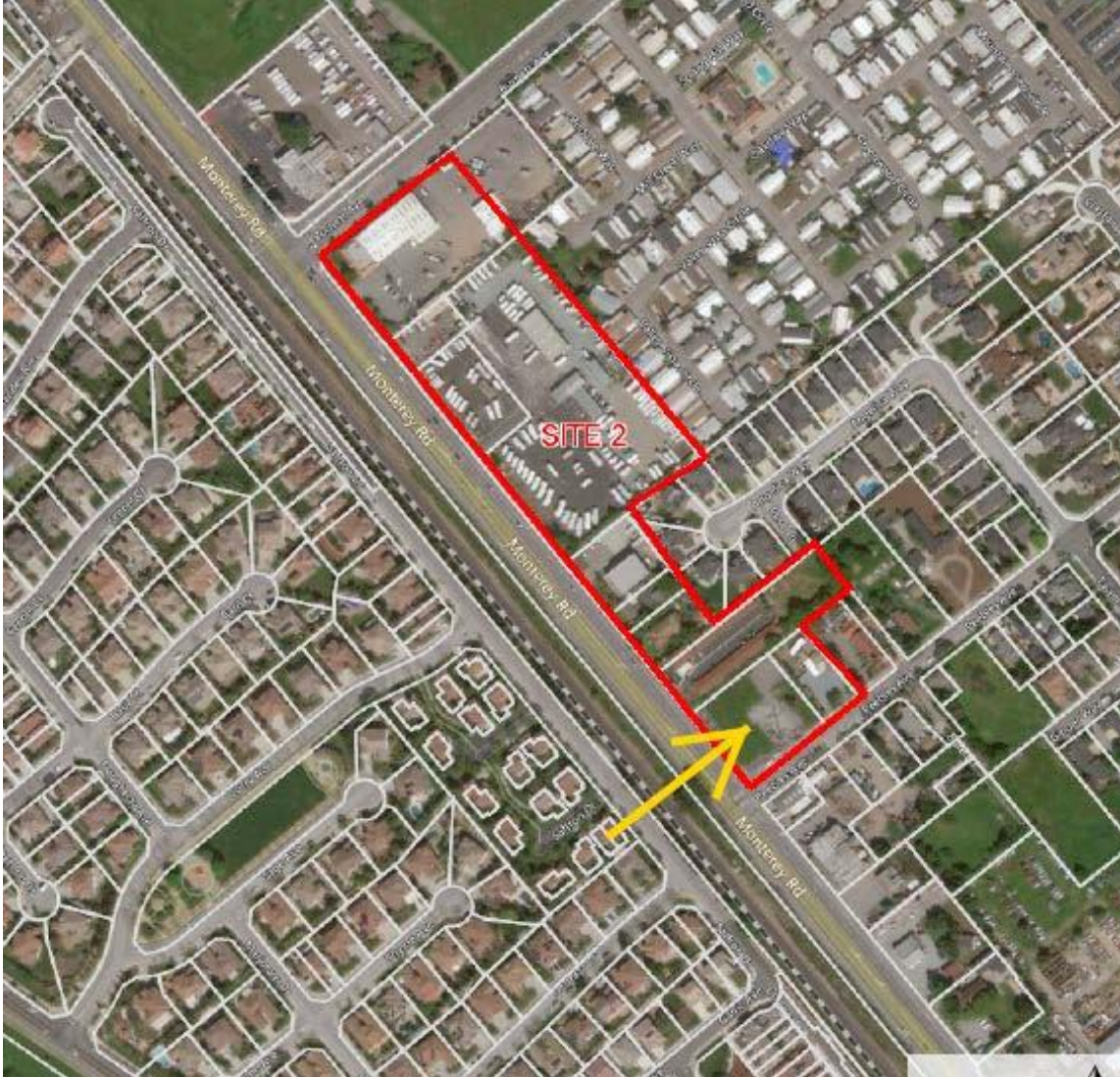
Packet Pg. 28

BROKERAGE & CONSULTING

Block 2 –

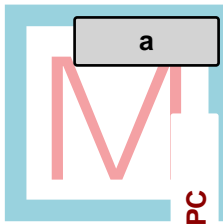
Burnett Ave. to Peebles Ave.

NE Corner Peebles Ave. & Monterey Rd.



Google

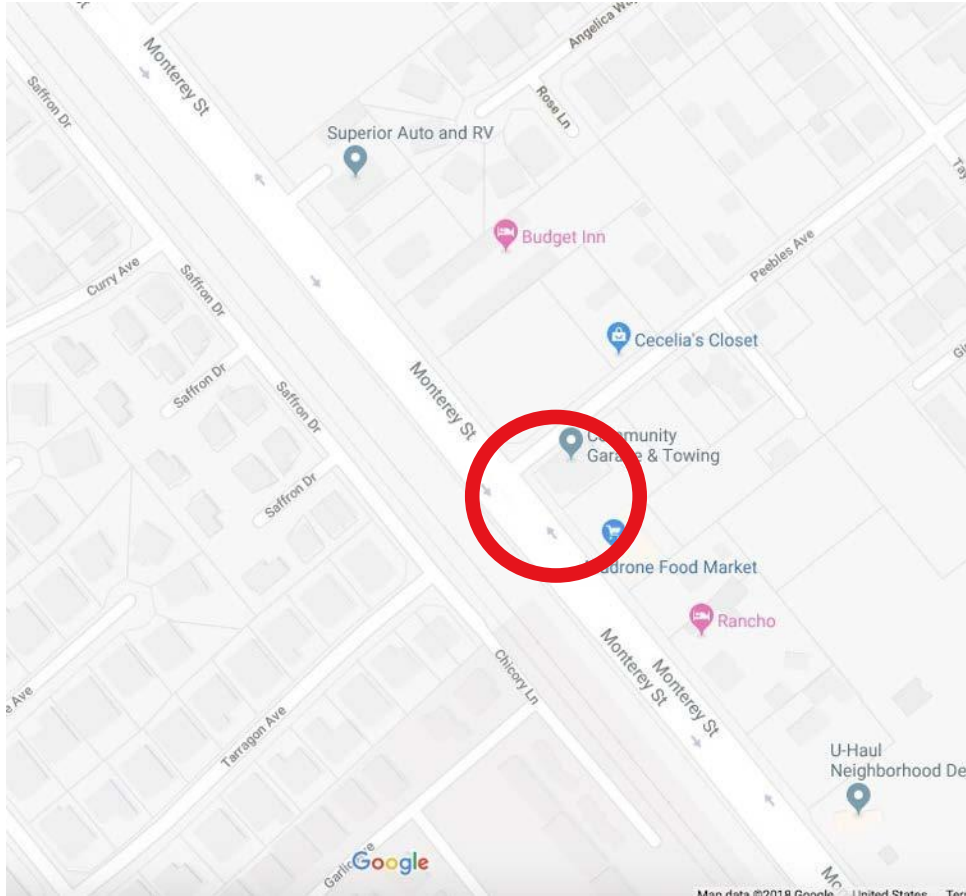
712



Block 3 –

Peebles Ave. to Madrone Pkwy.
SE Corner Peebles Ave. & Monterey Rd.

a



The SE corner is the “coming home” commercial corner. Thus, this site will not draw as high of interest as the NE site due to the proven consistency of a “*going to work*” commercial corner driving higher sales volumes than a “coming home” corner.

In addition, this parcel (the SE corner) is a relatively small parcel with only 7000 sq. ft. which would only allow a development of 1750 square feet of commercial space to be built (using retail parking codes). Even if this commercial square footage were at the bottom of a larger mixed-use project, the lack of retail immediately surrounding the site will make leasing a challenge. Therefore, we do not recommend requiring commercial on this site.



Conclusion: Commercial is unlikely to be sustainable on this corner, therefore, should not be required.

METROVATION

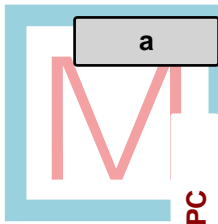
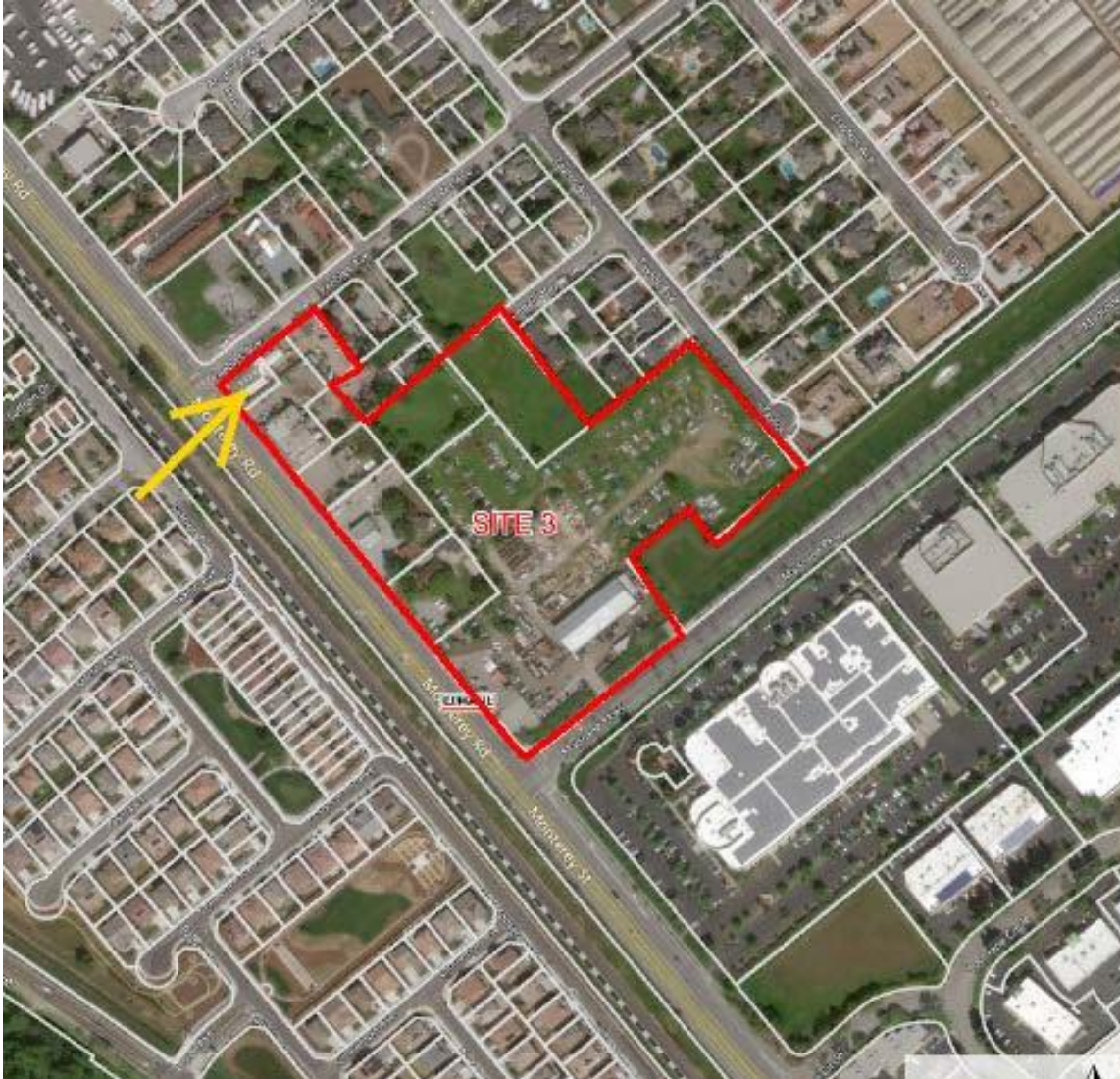
713

Packet Pg. 30

BROKERAGE & CONSULTING

Block 3 –

Peebles Ave. to Madrone Pkwy.
SE Corner Peebles Ave. & Monterey Rd.



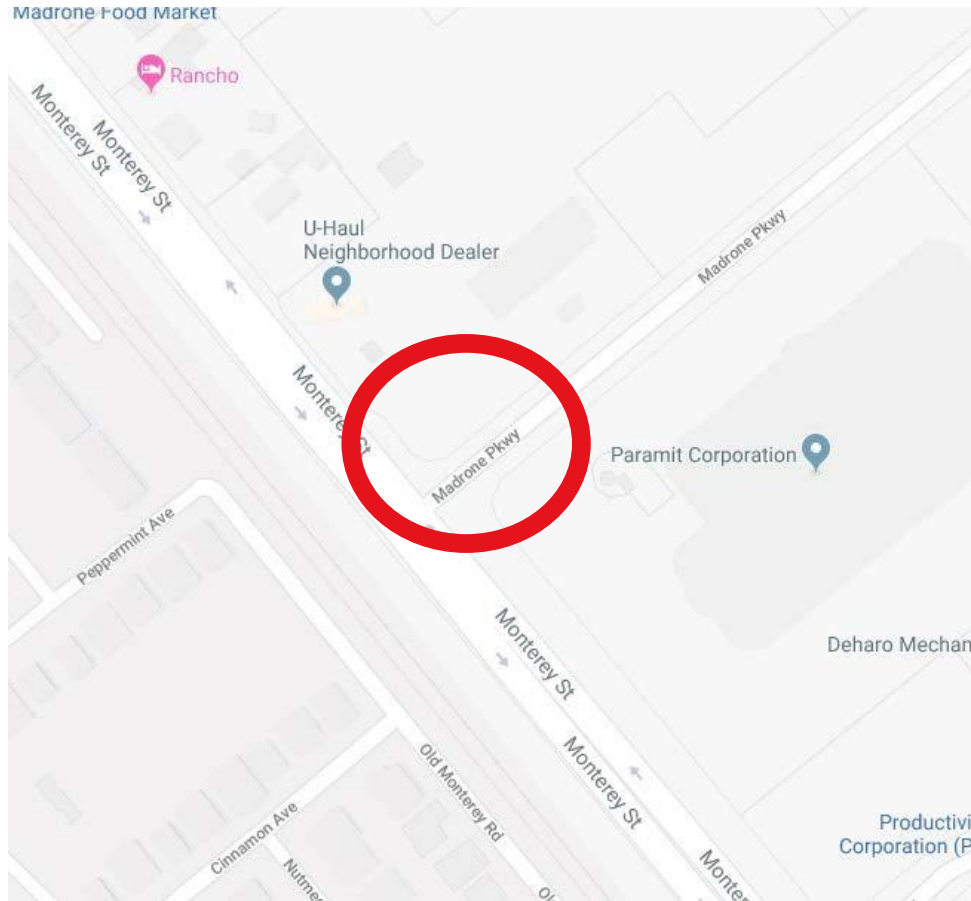
Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Google

Block 3 –

Peebles Ave. to Madrone Pkwy.
NE Corner Madrone Pkwy. & Monterey Rd.

a



The NE corner of Madrone Pkwy. and Monterey Rd. is across the street (Madrone) from a new industrial and office development. This industrial and office park project creates opportunity for the NE corner – the proximity of businesses and the size of the NE parcel (7.53 acres) allows for a substantial, and sustainable, development to occur here.

We suggest the City require commercial development on this corner. Also, to promote the most effective traffic flow, we also suggest that no median be built that would prevent a left turn from Madrone Pkwy. on to Monterey Road.



Conclusion: Commercial is sustainable and would benefit from proximity to the industrial park, therefore we suggest it be required.

METR@VATION

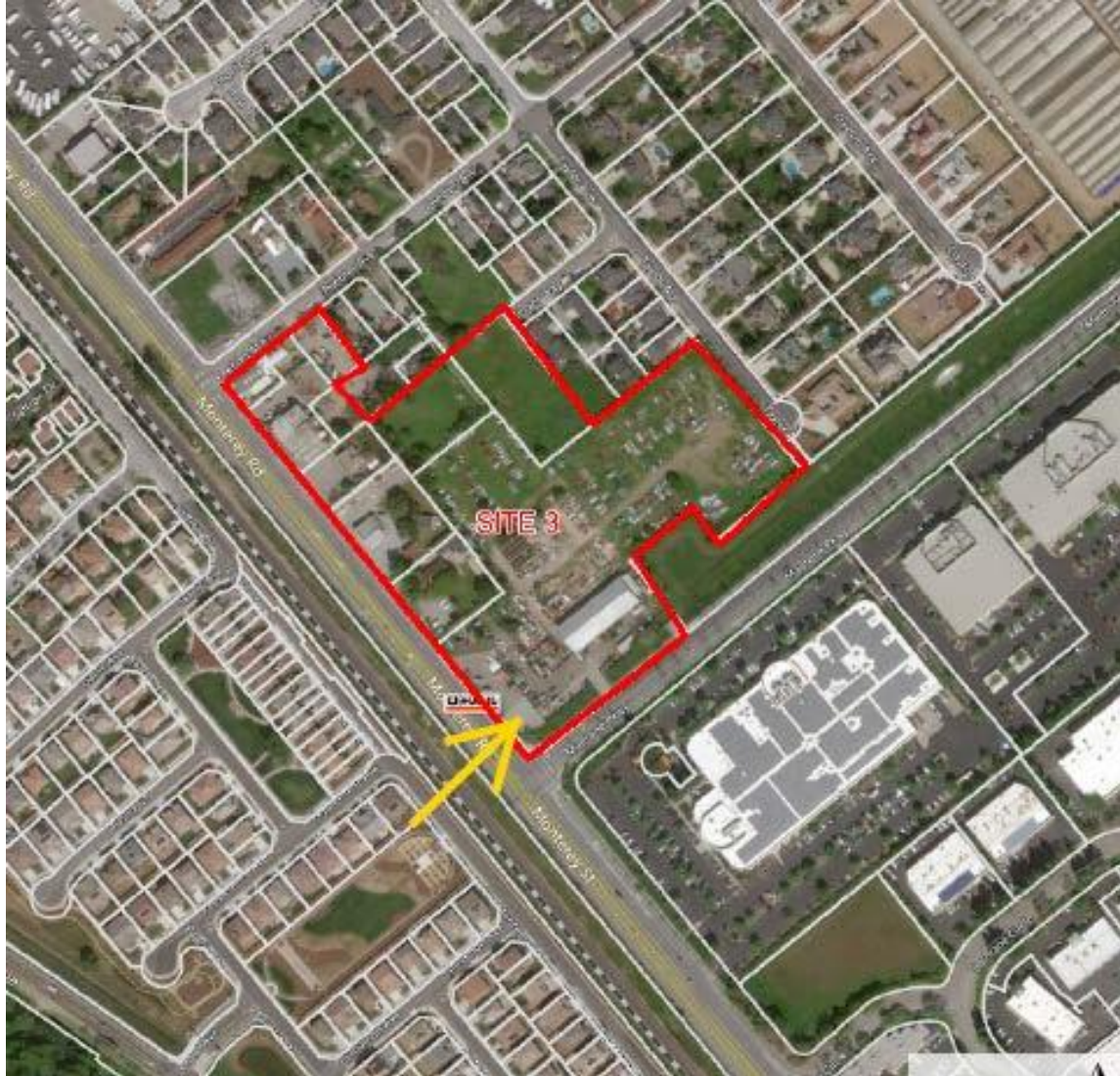
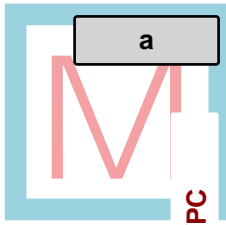
715

Packet Pg. 32

BROKERAGE & CONSULTING

Block 3 –

Peebles Ave. to Madrone Pkwy.
NE Corner Madrone Pkwy. & Monterey Rd.

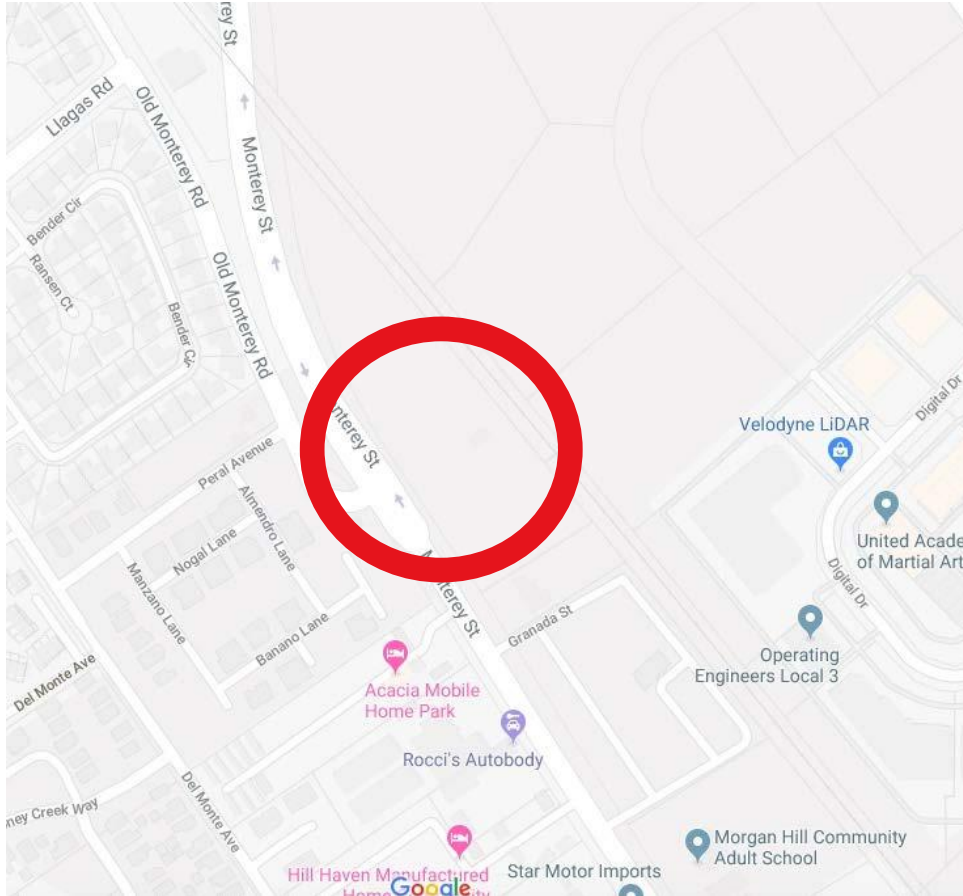


Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Block 4 –

Railroad Overcrossings to Morgan Hill Community Adult School NE & SE Corners Old Monterey Rd. (Extension) & Monterey Rd.

a



At the NE or SE corner of the intersection of Old Monterey Rd. and Monterey Rd., it is possible to create a small, fun, retail building that can provide a limited number of food and service businesses to the surrounding residential. Currently, there are few serving this residential area that are within a walkable distance. A multi-tenant retail building at this intersection can create a commercial respite for the existing homes, and new ones currently being built (at the south end of Block 4). We believe only a small shop building (3000-4000 square feet) would be sustainable. Typical tenants would be coffee, casual dining, and service retail. In conclusion, we support commercial zoning - specifically retail- at the NE or SE corners of Monterey Rd. and Old Monterey Rd..

○ Conclusion: Commercial is viable, therefore can be allowed, but should not be required.

METROVATION

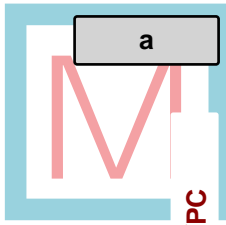
717

Packet Pg. 34

BROKERAGE & CONSULTING

Block 4 –

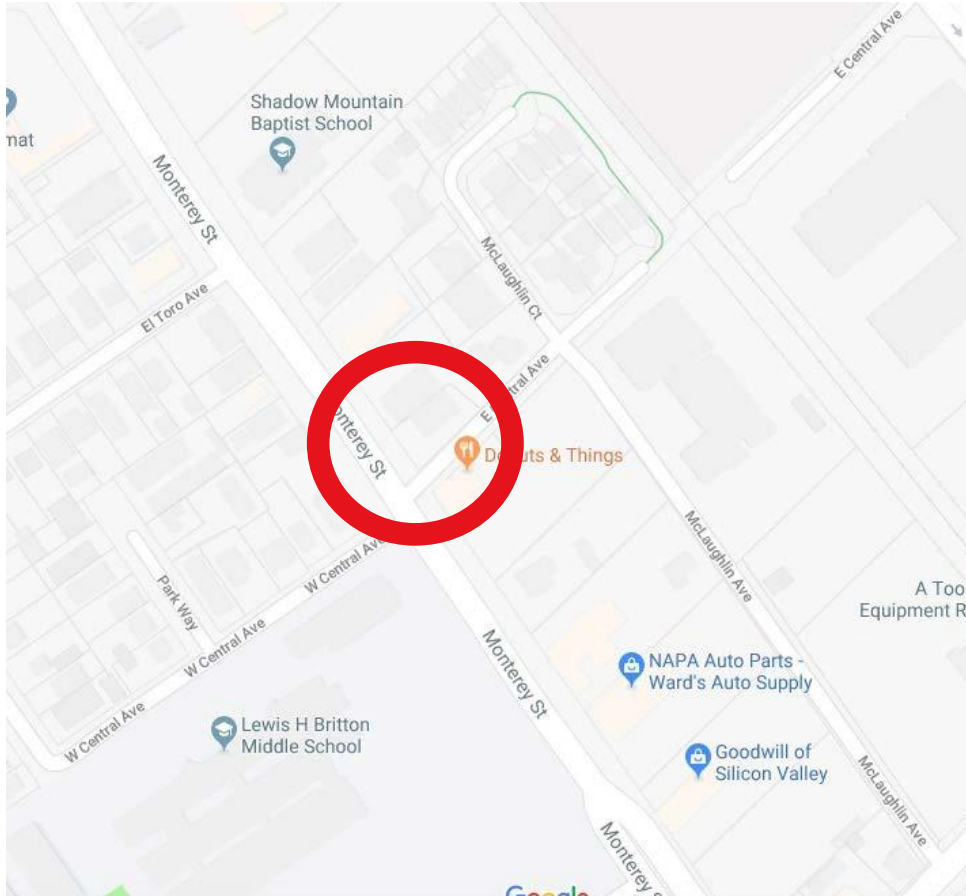
Railroad Overcrossings to Morgan Hill Community Adult School
NE & SE Corner Old Monterey Rd. (Extension) & Monterey Rd.



Block 5 –

Morgan Hill Community Adult School to East Central Ave.
NE Corner East Central & Monterey Rd.

a



The entire east side of Block 5 has only two single-family residential units - other uses currently are multi-family or commercial. While it is difficult to change the zoning for a single family residential unit, we felt that commercial zoning was appropriate for the NEC of East Central and Monterey Rd., conditioned upon language being inserted into the Zoning Document that will allow the non-conforming use, additional leeway on structural repairs and modifications so that the zoning document does not cause financial issues (loans or refinance) or undue distress due to its non-conforming status.

○ Conclusion: Commercial is viable, therefore can be allowed, but should not be required.

METROVATION

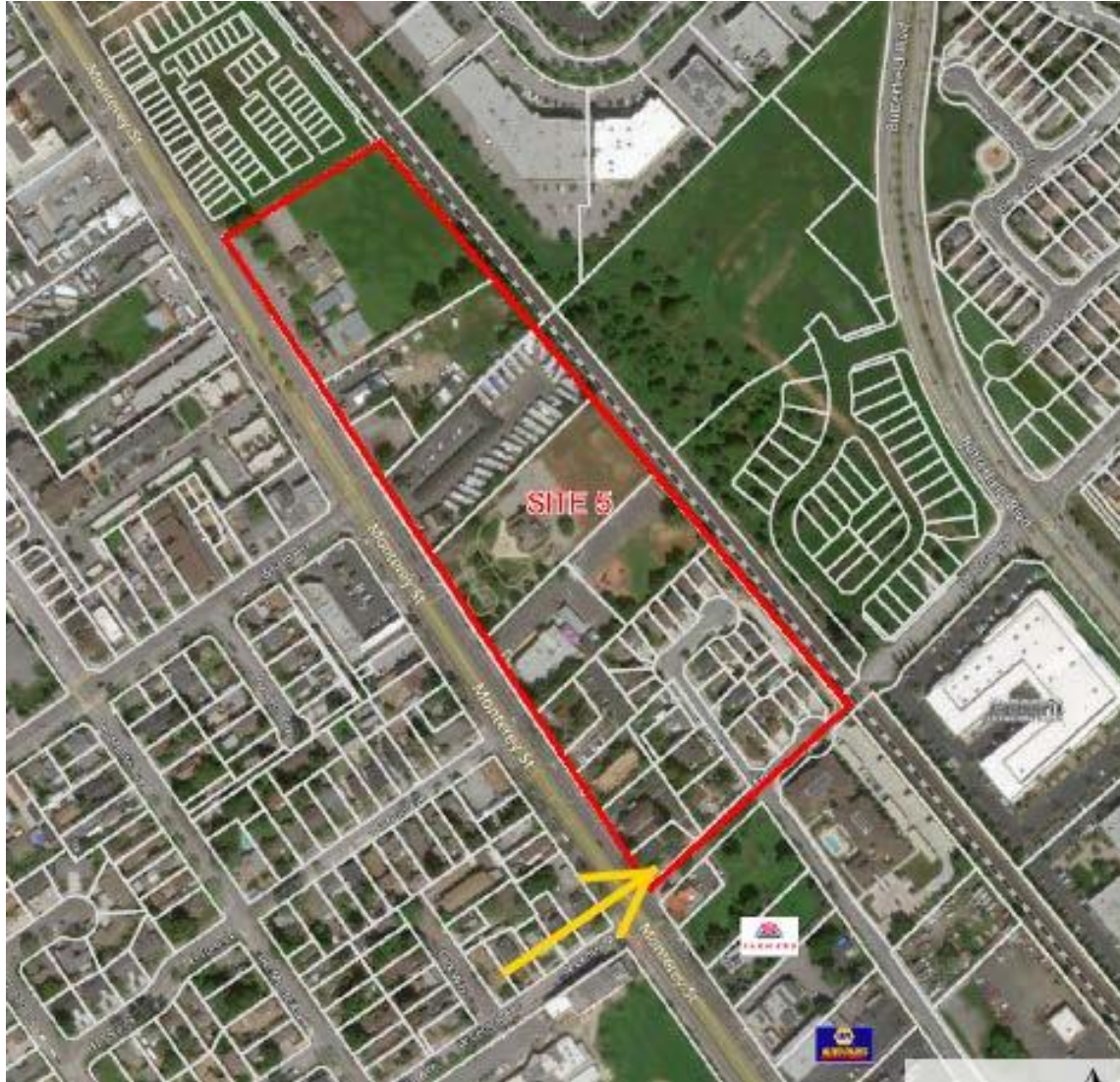
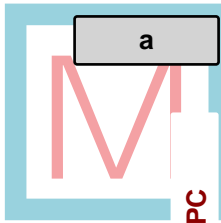
719

Packet Pg. 36

BROKERAGE & CONSULTING

Block 5 –

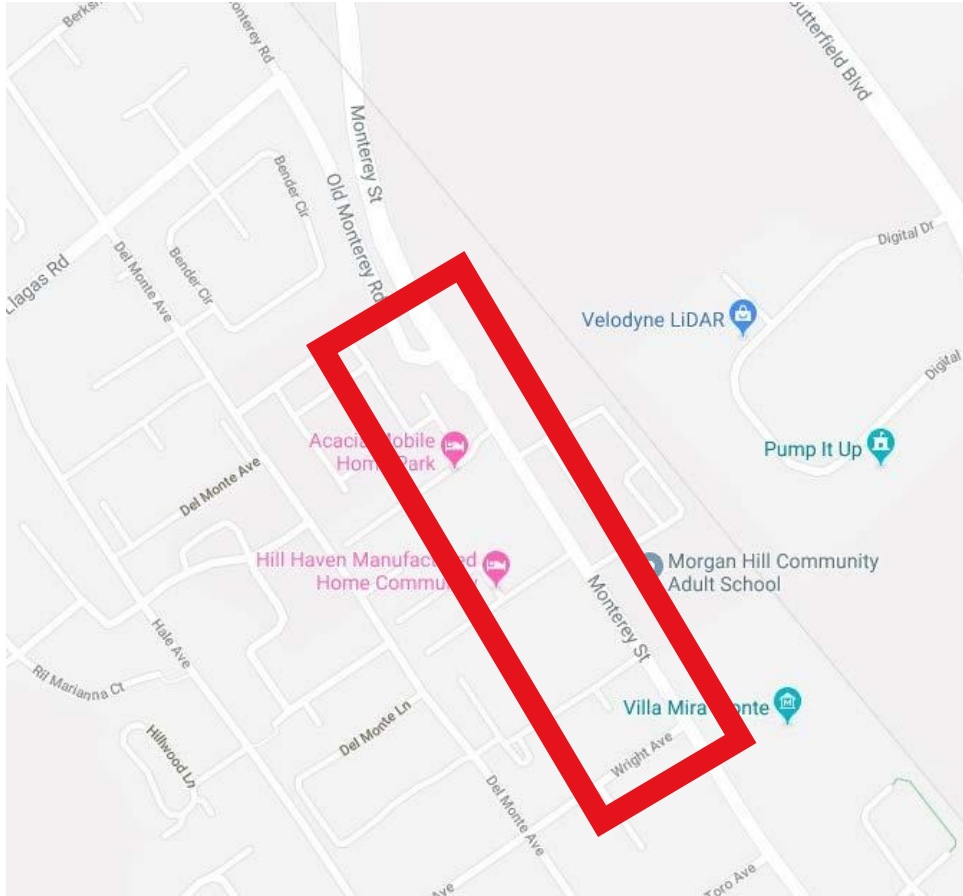
Morgan Hill Community Adult School to East Central Ave.
NE Corner East Central & Monterey Rd.



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Block 6 – Old Monterey Rd. to Wright Ave.

a



There is active commercial property in existence on this block. If a redevelopment were to occur, no additional commercial should be required.

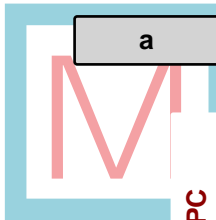
METR©VATION

721

Packet Pg. 38

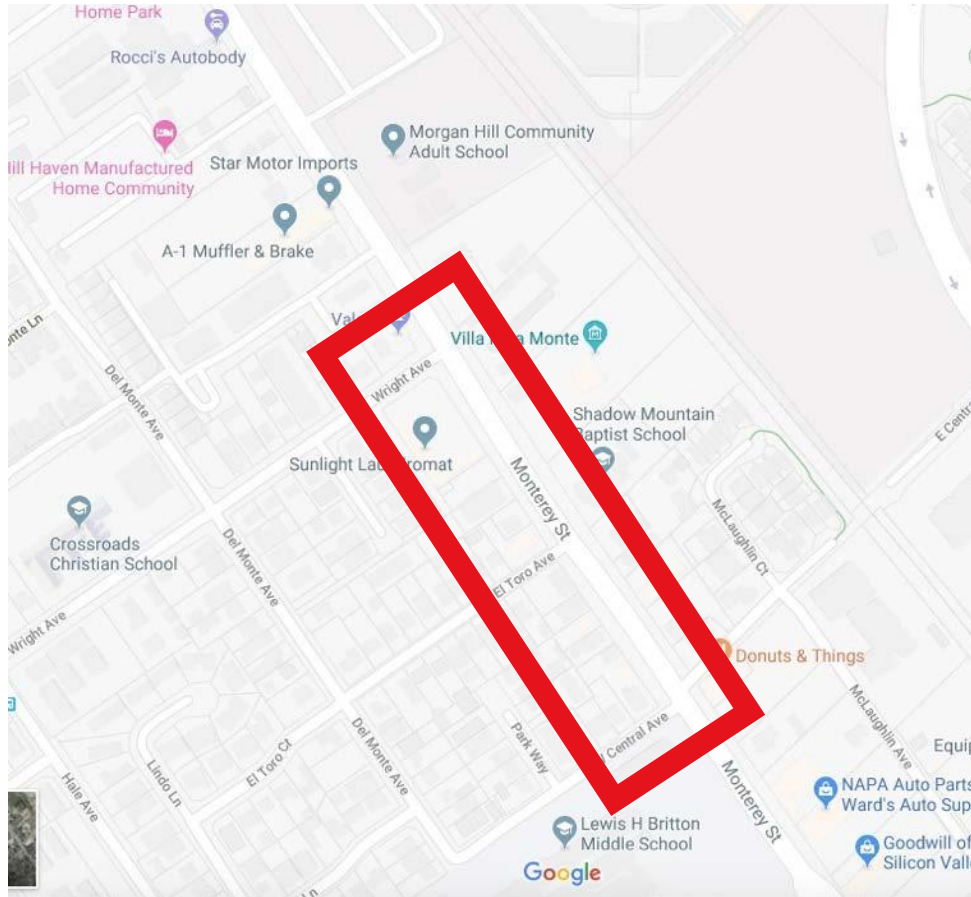
BROKERAGE & CONSULTING

Block 6 – Old Monterey Rd. to Wright Ave.



Block 7 – Wright Ave. to W. Central Ave.

a



There is active commercial property in existence on this block. If a redevelopment were to occur, no additional commercial should be required.

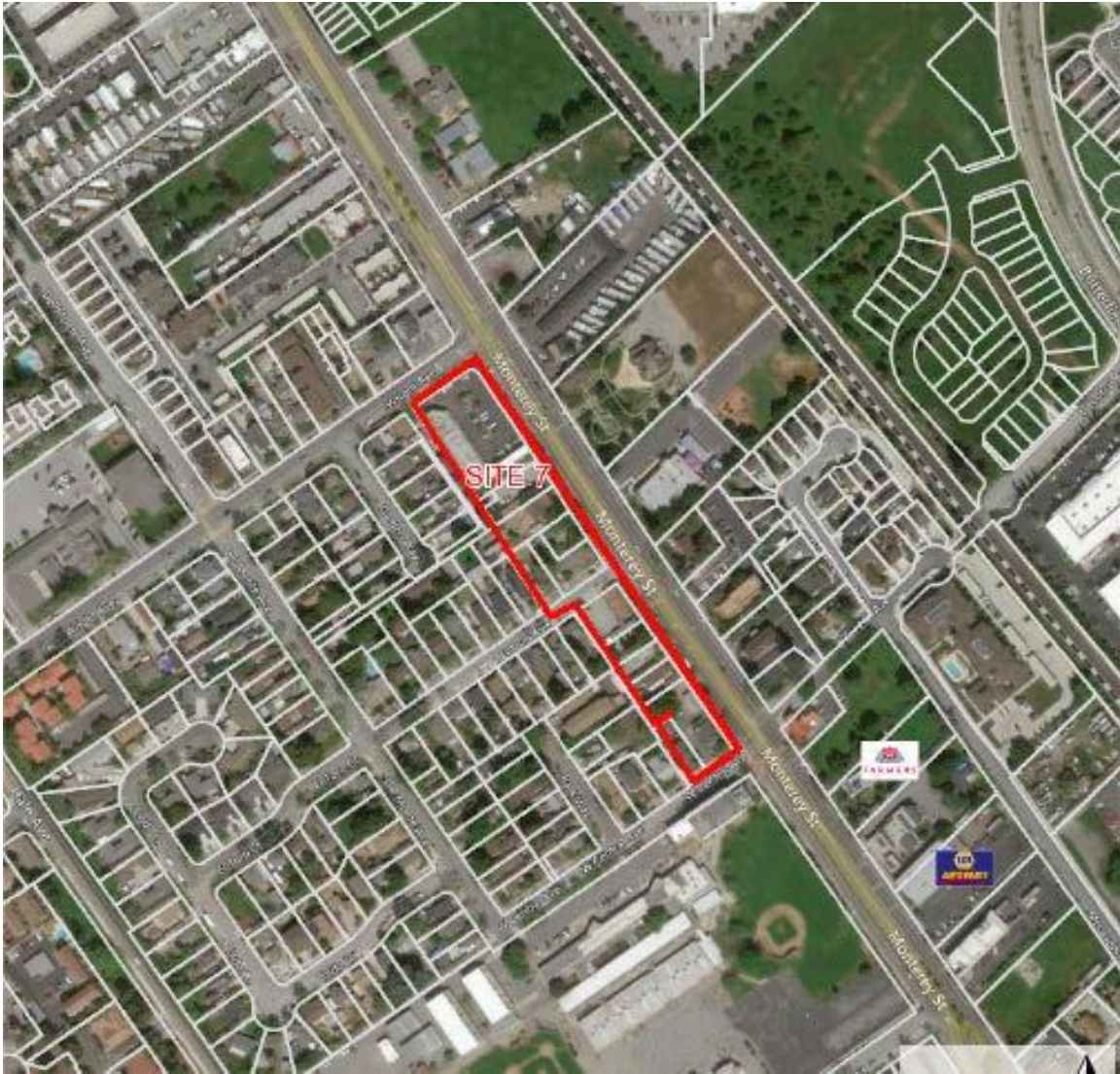
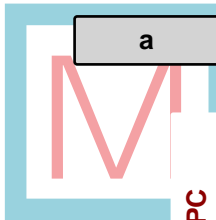
METR@VATION

723

Packet Pg. 40

BROKERAGE & CONSULTING

Block 7 – Wright Ave. to W. Central Ave.



Block 8 – Bisceglia Ave. to San Pedro Ave.

a



There is active commercial property in existence on this block. If a redevelopment were to occur, no additional commercial should be required.

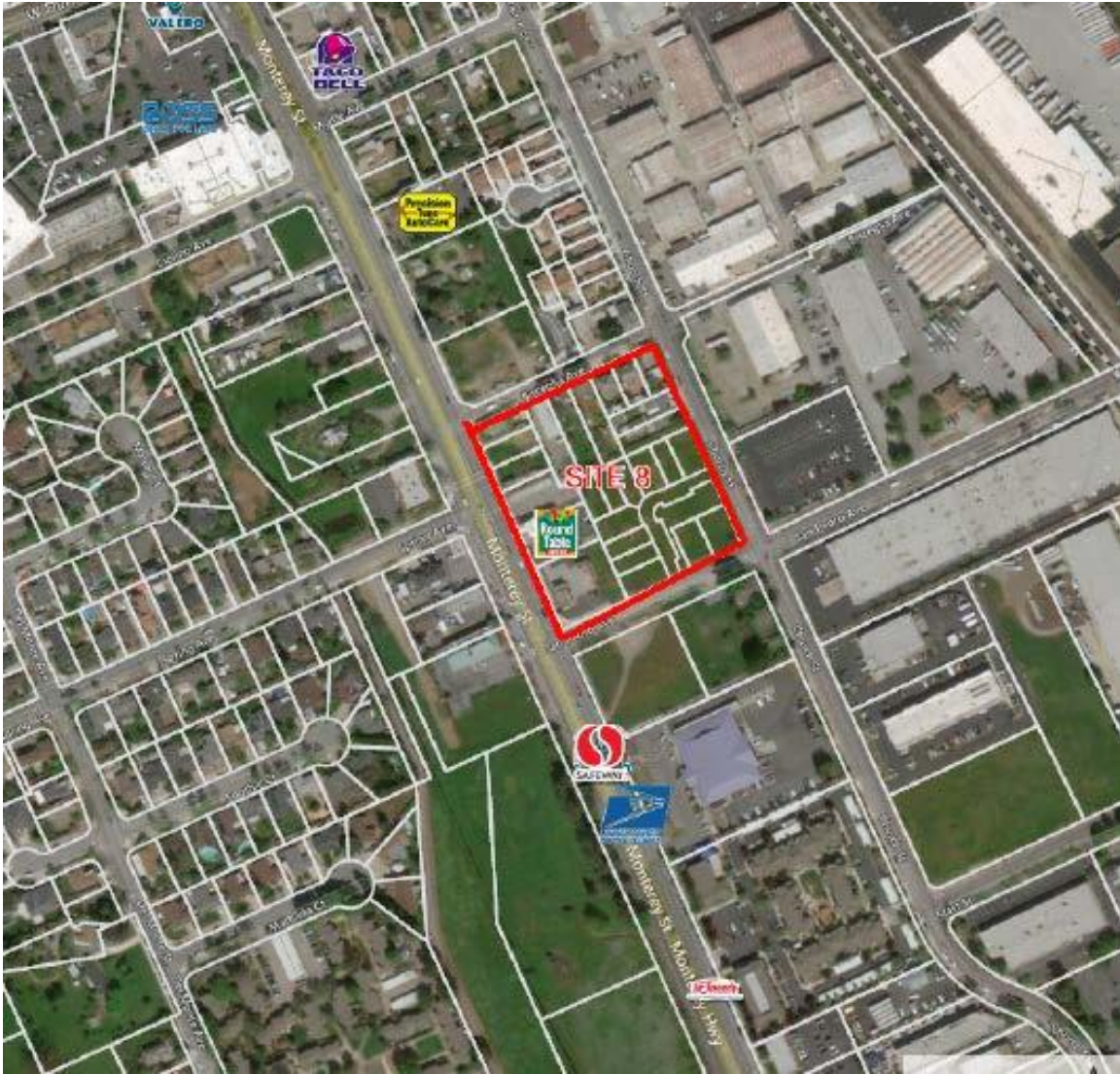
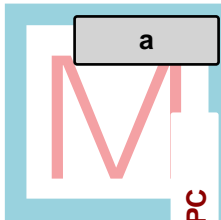
METR©VATION

725

Packet Pg. 42

BROKERAGE & CONSULTING

Block 8 – Bisceglia Ave. to San Pedro Ave.



Block 9 –

San Pedro Ave. to Barrett Ave.

SE Corner San Pedro Ave. & Monterey Rd.

a



This area of south Morgan Hill already features a sustained commercial flavor and has the land available to accommodate additional commercial development. The vacant lot located on the SE corner of San Pedro Ave. and Monterey Rd. should be allowed to have commercial/retail development.



Conclusion: Commercial is viable, therefore can be allowed, but should not be required.

METROVATION

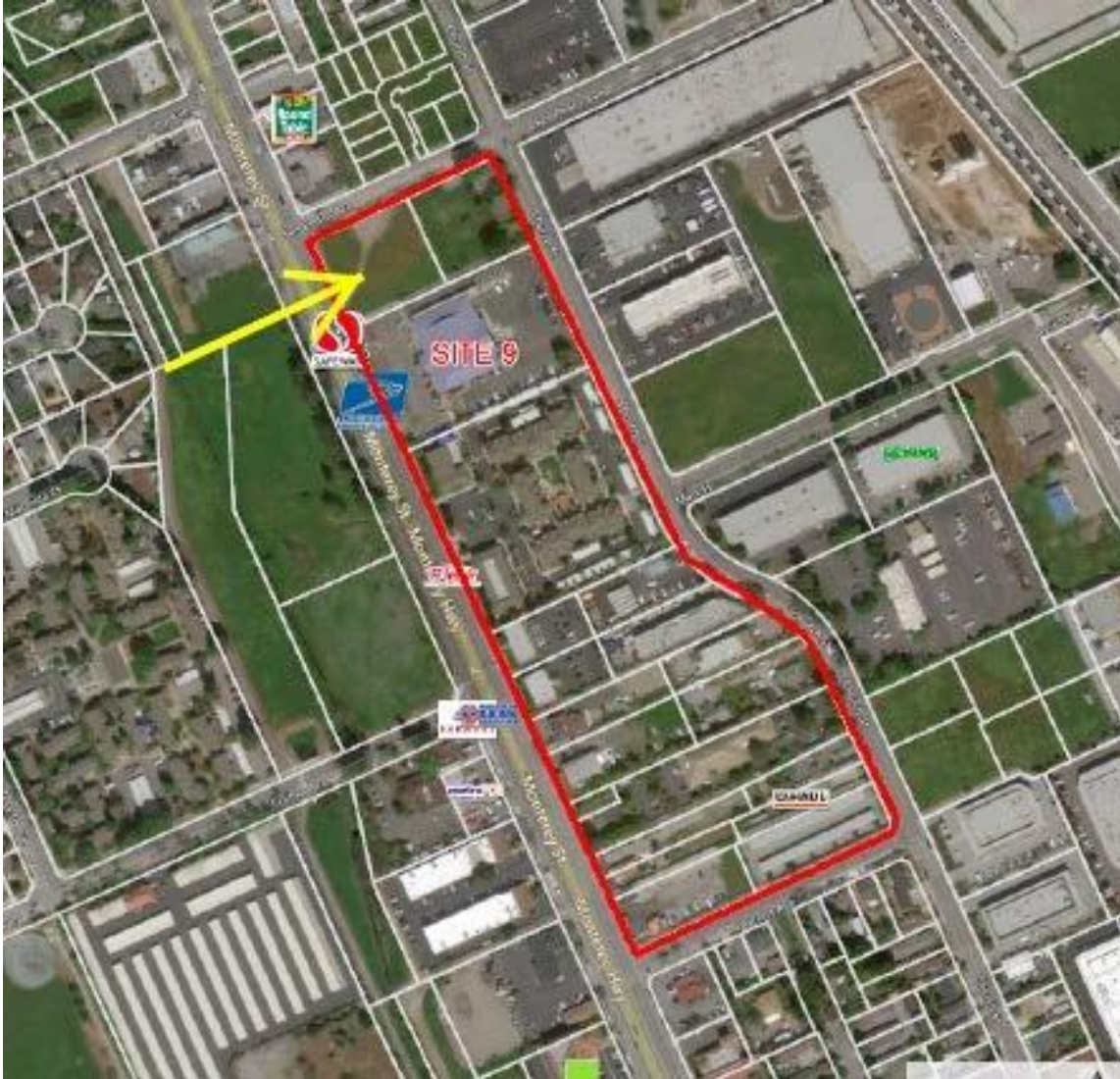
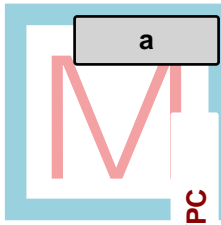
727

Packet Pg. 44

BROKERAGE & CONSULTING

Block 9 –

San Pedro Ave. to Barrett Ave.
SE Corner San Pedro Ave. & Monterey Rd.

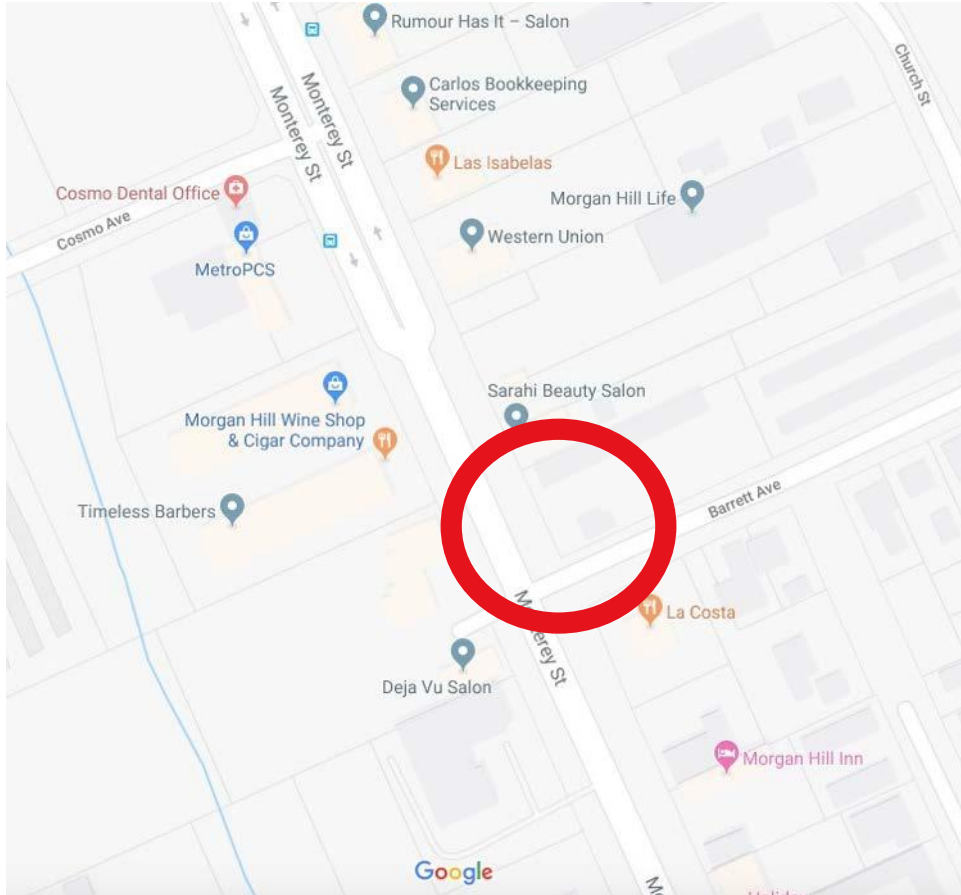


Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Block 9 –

San Pedro Ave. to Barrett Ave.
NE Corner Barrett Ave. & Monterey Rd.

a



The motel located at the NE corner of Barrett Ave. and Monterey Rd. appears to have significant deferred maintenance. While this property may provide affordable housing options for some citizens of Morgan Hill, it likely has areas not to code and detracts from the curb appeal of the block. Because it is under one ownership, along with the adjacent parcel to the north, it has increased opportunity for re-development. Therefore we suggest commercial for this parcel in any overlay zoning document.



Conclusion: Commercial is viable and likely, therefore should be zoned as such. We suggest commercial only at this corner.

METR@VATION

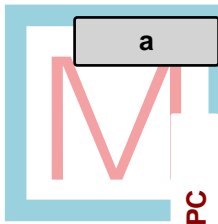
729

Packet Pg. 46

BROKERAGE & CONSULTING

Block 9 –

San Pedro Ave. to Barrett Ave.
NE Corner Barrett Ave. & Monterey Rd.



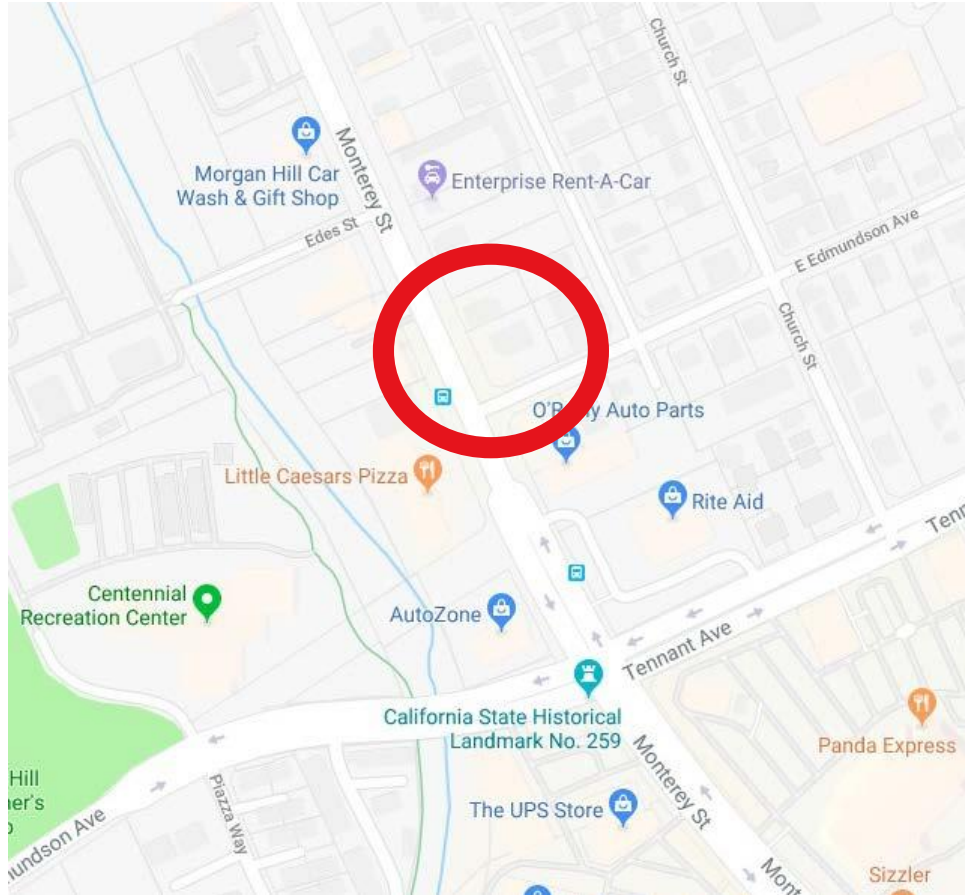
Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Block 10 –

Barrett Ave. to E. Edmundson Ave.

NE Corner E. Edmundson Ave. & Monterey Rd.

a



The NE corner of E. Edmundson Ave. and Monterey Rd. is an underutilized parcel currently occupied by an animal hospital. This area of Morgan Hill has a strong sense of commercial along Monterey Rd. The intersection is only a block away from the major intersection of Tennant and Monterey Rd. and has commercial uses adjacent on two sides and across the street. Intensifying the parcel is feasible and will make the best use of the property.

This does not necessarily mean changing the use. It is possible other veterinary hospital consortiums are looking to develop larger facilities that attract customers from a greater distance. A commercial use, as such, would be an upgrade from the current building and parcel condition. Therefore, we recommend requiring commercial on this parcel in the zoning document.



Conclusion: Commercial is viable at this corner. We suggest zoning commercial only for this parcel.

METROVATION

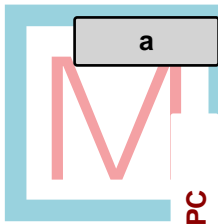
731

Packet Pg. 48

BROKERAGE & CONSULTING

Block 10 –

Barrett Ave. to E. Edmundson Ave.
NE Corner E. Edmundson & Monterey Rd.

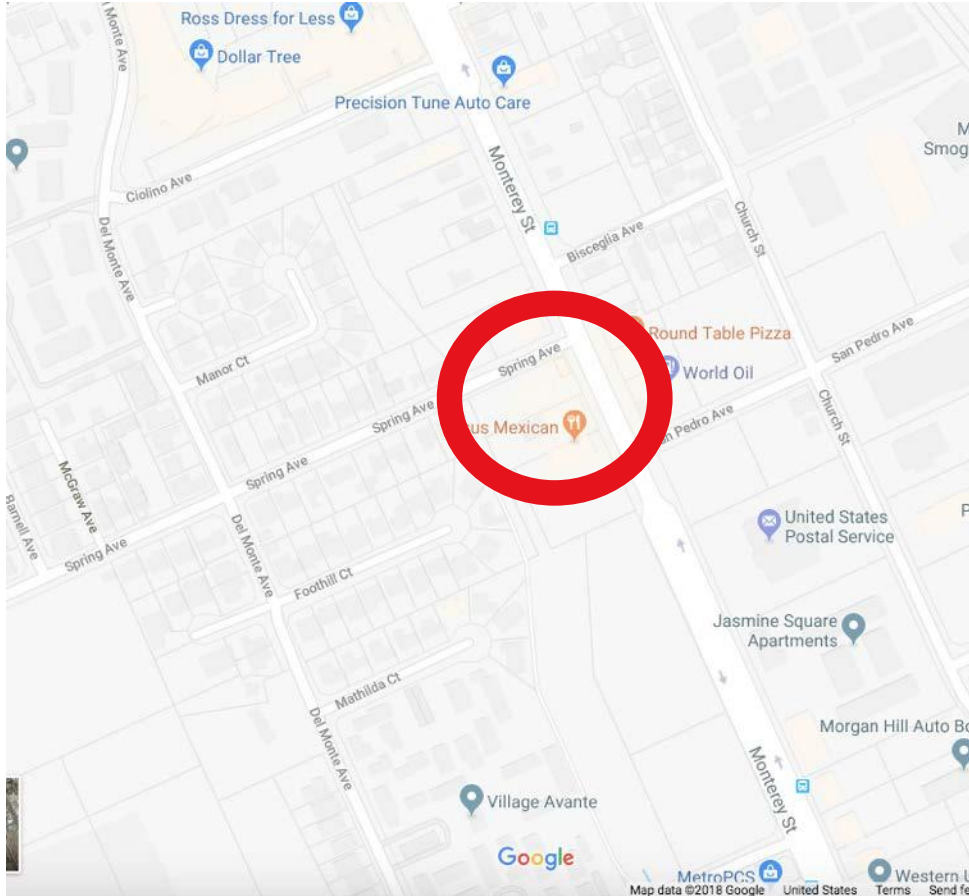


Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Block 11 –

South of Downtown - Spring Ave. to Cosmo Ave.
SW Corner Spring Ave. & Monterey Rd.

a



The hard corner at Spring Ave. and Monterey Rd. (SWC) can be looked at as an entrance to a potential new development along Block 11. Using an entrance from Spring St, and developing a block-long drive aisle, passengers would be able to access a variety of possible developments with buildings up on Monterey Rd, often, with parking conveniently located in the rear. A north/south drive aisle will serve to alleviate traffic from Monterey Rd., while still providing easy access to any potential new development.

Therefore, we recommend requiring commercial on the SW corner of Spring and Monterey.



Conclusion: We suggest requiring commercial on the SW corner of Spring and Monterey.

METROVATION

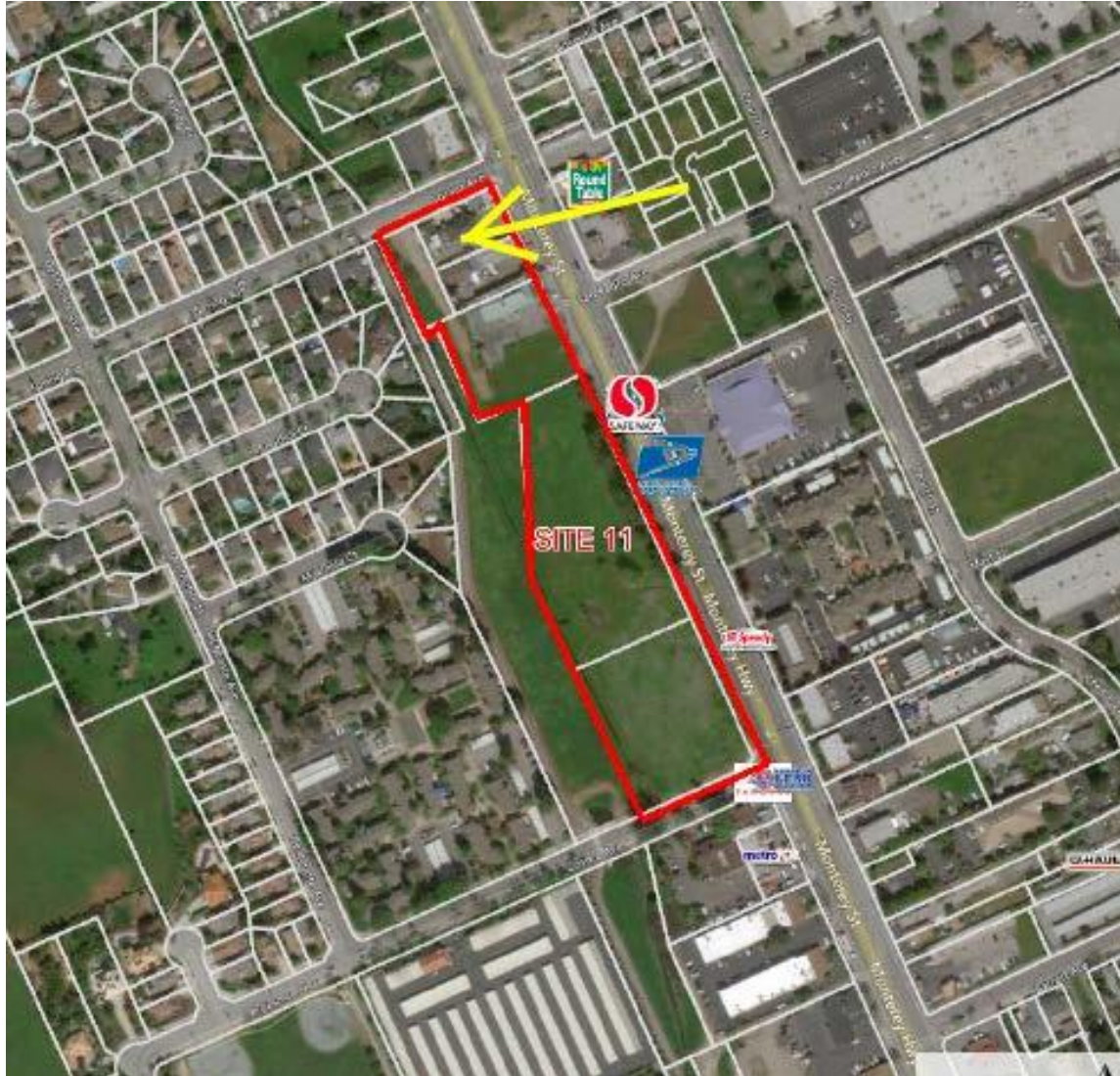
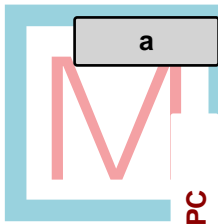
733

Packet Pg. 50

BROKERAGE & CONSULTING

Block 11 –

South of Downtown - Spring Ave. to Cosmo Ave.
SW Corner Spring Ave. & Monterey Rd.



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Block 11 –

South of Downtown – Spring Ave. to Cosmo Ave.
NW Corner Cosmo Ave. & Monterey Rd.

a



Similar to our comments above, the entire Block 11 is ripe for new development with the corners focused on local-serving commercial uses. We strongly advocate for preserving the corners to accommodate this type of use.

Block 11 is mostly vacant and can accommodate new development. While the market will not support retail on the entire property, any new development will want to create density and keep the commercial feel to the area.

Therefore, we recommend requiring commercial on the NW corner of Cosmo Ave. and Monterey Rd.



Conclusion: Commercial only zoning on the corner parcel is suggested.

METR@VATION

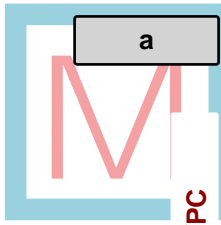
735

Packet Pg. 52

BROKERAGE & CONSULTING

Block 11 –

South of Downtown - Spring Ave. to Cosmo Ave.
NW Corner Cosmo Ave. & Monterey Rd.



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Block 12 –

South of Downtown - Cosmo Ave. to Edmundson Ct.
SW Corner Cosmo Ave. & Monterey Rd.

a



Currently developed and leased to a variety of retail tenants, this corner will benefit from any development that occurs on the north side of Cosmo Ave.

We recommend requiring commercial on the SW corner Cosmo Ave. and Monterey Rd.



Conclusion: Commercial only zoning on the corner parcel is suggested.

METROVATION

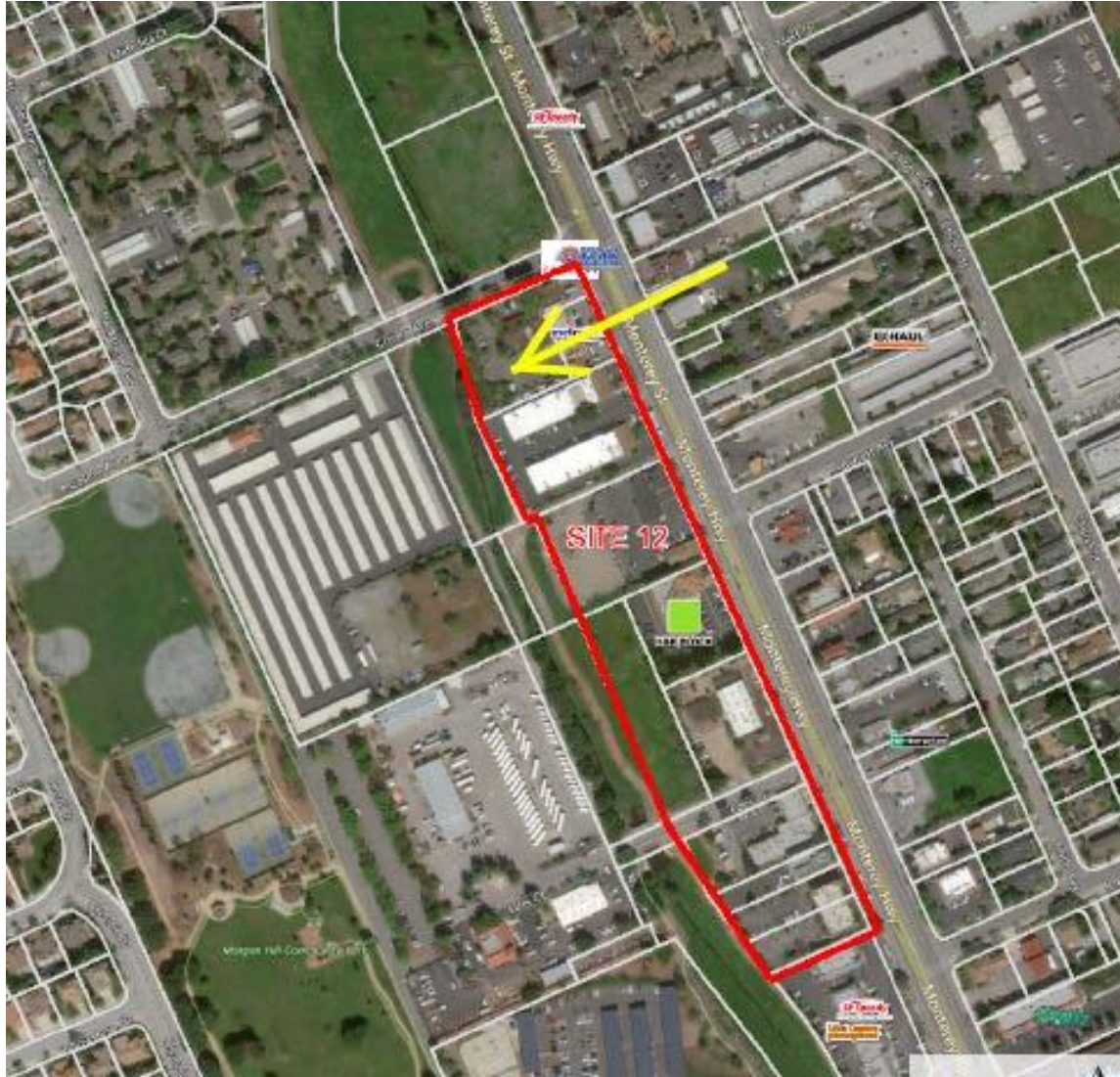
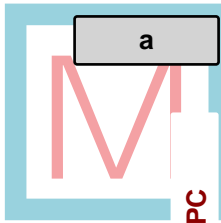
737

Packet Pg. 54

BROKERAGE & CONSULTING

Block 12 –

South of Downtown - Cosmo Ave. to Edmundson Ct.
SW Corner Cosmo Ave. & Monterey Rd.



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Draft Frontage Standards

What are Frontage Standards?

a

Frontage Standards are specific requirements for building frontages, which enable a more desirable built environment



Porch



Shopfront



Front Yard

Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Frontage Types

a

TABLE 18.30-XX: ALLOWED FRONTAGE TYPES – XX OVERLAY ZONE, SUB-ZONES

Frontage Type	N Sub-Zone		C Sub-Zone	
	Front	Street Side	Front	Street Side
Forecourt	A	-	A	A
Front Yard	A	A	-	-
Porch: Engaged	A	A	-	-
Porch: Projecting	A	A	-	-
Shopfront	A	A	A	A
Stoop	A	A	A	A
Terrace	A	A	A	A

Draft

Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Frontage Type Application

a

TABLE 18.30-XX: ALLOWED FRONTAGE TYPES – XX OVERLAY ZONE, SUB-ZONES

Frontage Type	N Sub-Zone		C Sub-Zone	
	Front	Street Side	Front	Street Side
Forecourt	A	-	A	A
Front Yard	A	A	-	-
Porch: Engaged	A	A	-	-
Porch: Projecting	A	A	-	-
Shopfront	A	A	A	A
Stoop	A	A	A	A
Terrace	A	A	A	A

Draft

Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Frontage Type Examples

5. Shopfront.

- a. **Description.** The main façade of the building is placed at or near the right-of-way with an at-grade entrance along the sidewalk. The shopfront is generally intended for retail or service uses and has substantial glazing at the ground floor level.

b. **Standards.**

Size	
Depth, Recessed Entries ¹	5 ft. max.
Transparency, Ground Floor	75% min.
Projection ²	
Depth	4 ft. min.
Setback From Curb	3 ft. min.
Height	8 ft. min.
Miscellaneous	
May be used in conjunction with another allowed frontage type (e.g., terrace).	

¹ May be designed in a variety of configurations.

² May project over the sidewalk with an Encroachment Permit.



Draft

4. Porch: Projecting.

- a. **Description.** The main façade of the building has a small-to-medium setback from the right-of-way and a porch is attached within the setback providing access to the building. The porch provides necessary physical separation for the private lot from the public right-of-way. The projecting porch is open on three sides and projects in front of the primary building wall.

b. **Standards.**

Size	
Width, Porch	70% min. of building
Depth, Porch	5 ft. min.
Height, Clear (Floor to Cover)	8 ft. min.; 14 ft. max
Finish Level Above Sidewalk	3 ft. min.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
Porches must be open on three sides and have a roof.	



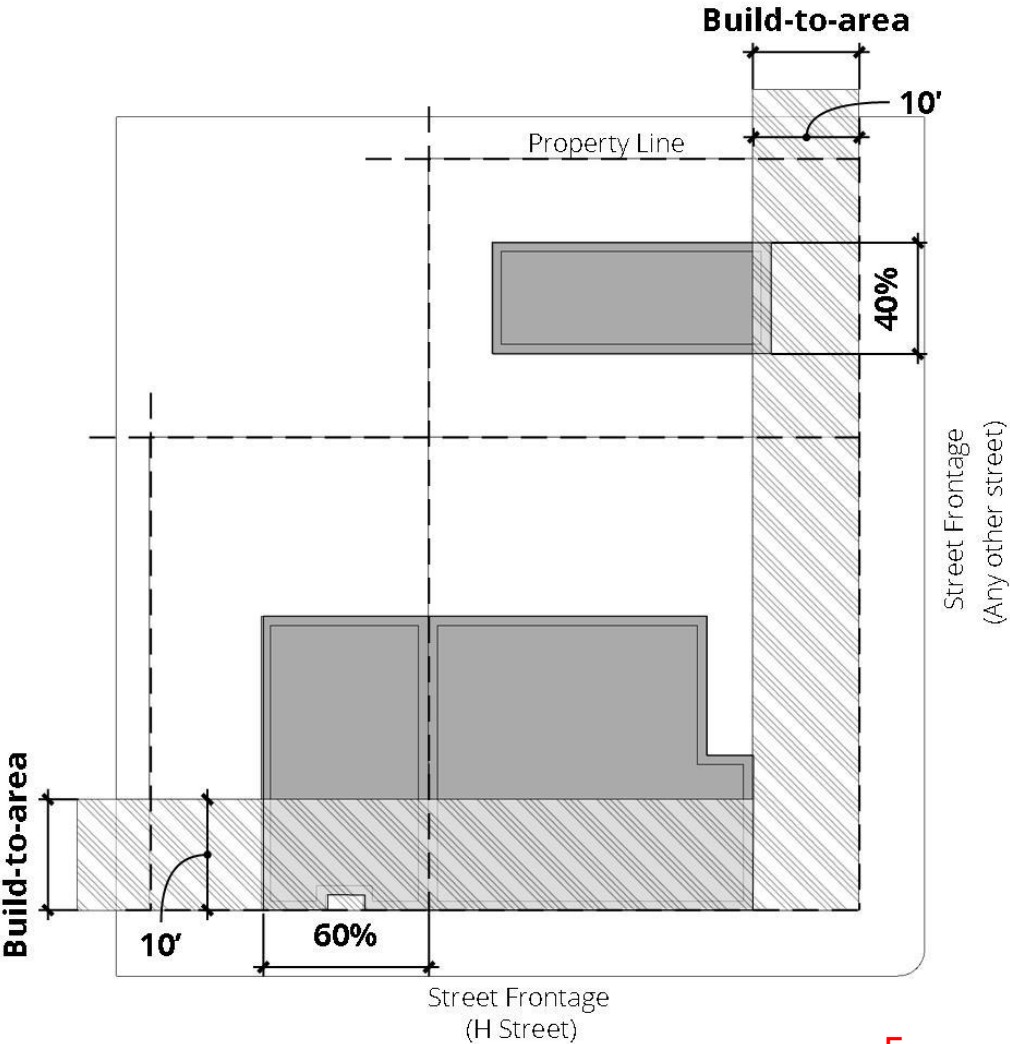
Draft

Supplemental Standards

a

Building Standards

- Maximum front setback
- 1st floor clear height for C Sub-Zone
- 1st floor building depth for C Sub-Zone
- Primary entrance oriented to the street
- Adaptive reuse



Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

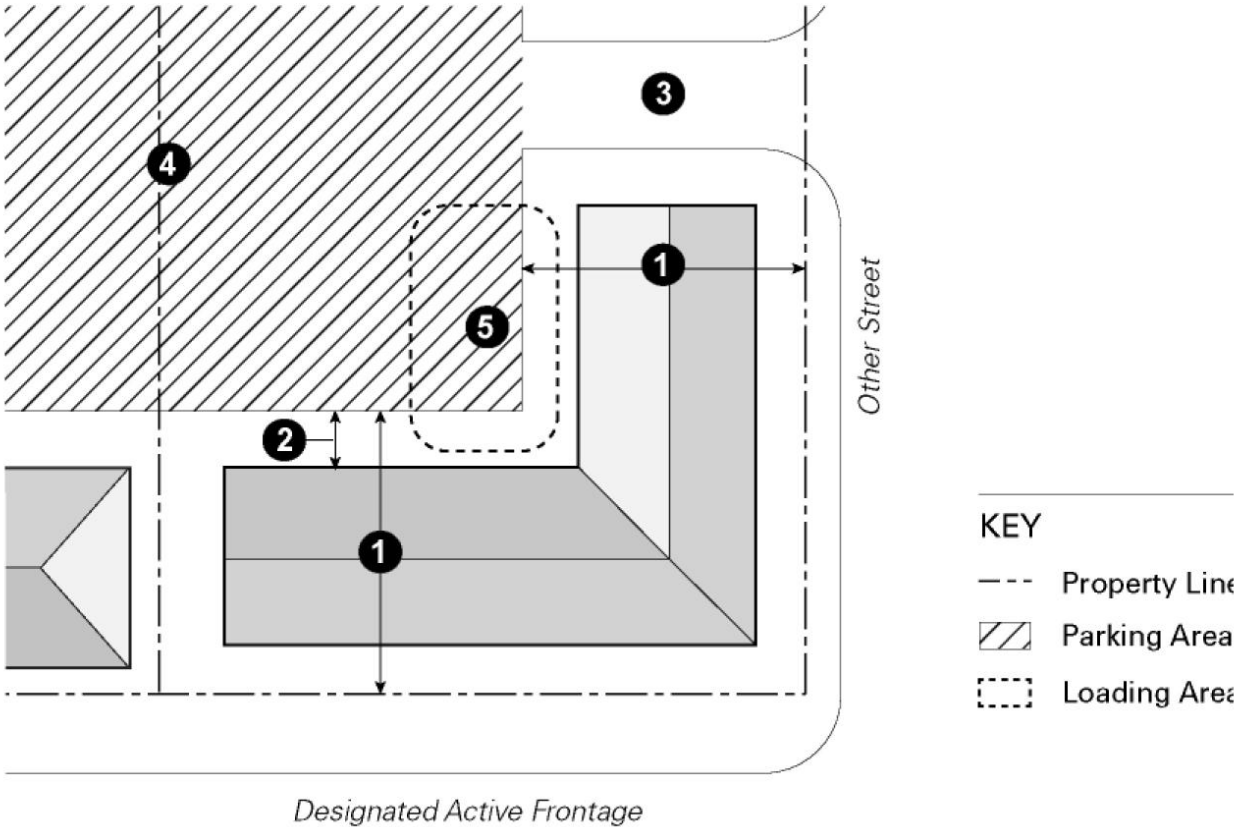
Example 744

Supplemental Standards

a

Connectivity/Site Standards

- Pedestrian and bicycle access/connection standards
- Maximum block length
- Parking behind buildings
- Open space/civic space requirement for large sites
- Street tree requirements



Example

Attachment: Workshop Presentation (2034 : Monterey Corridor BLMP Joint CC/PC

Questions & Comments

John Baty, Principal Planner

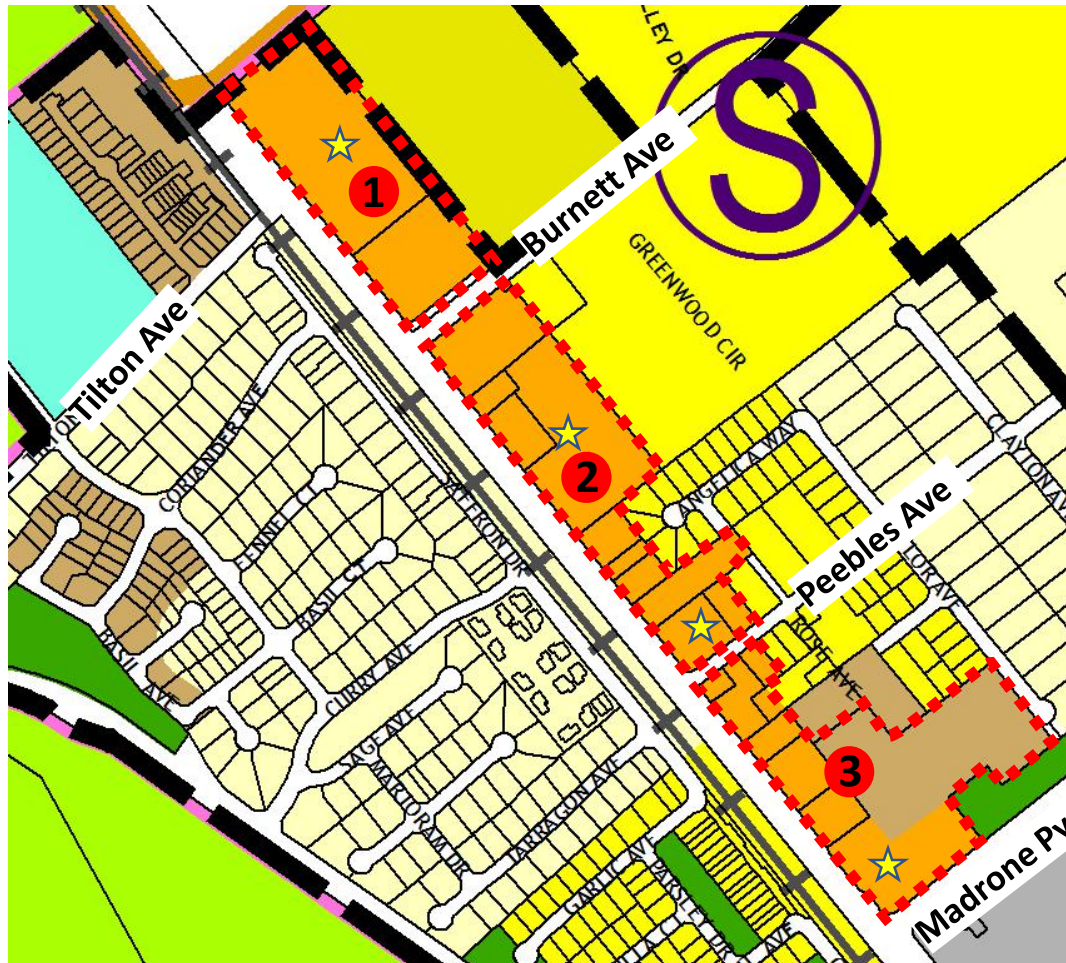
Phone: (408) 310-4635

Email: John.Baty@morganhill.ca.gov

Monterey Corridor Block-Level Master Plan Blocks

North: City Limits to Madrone Parkway

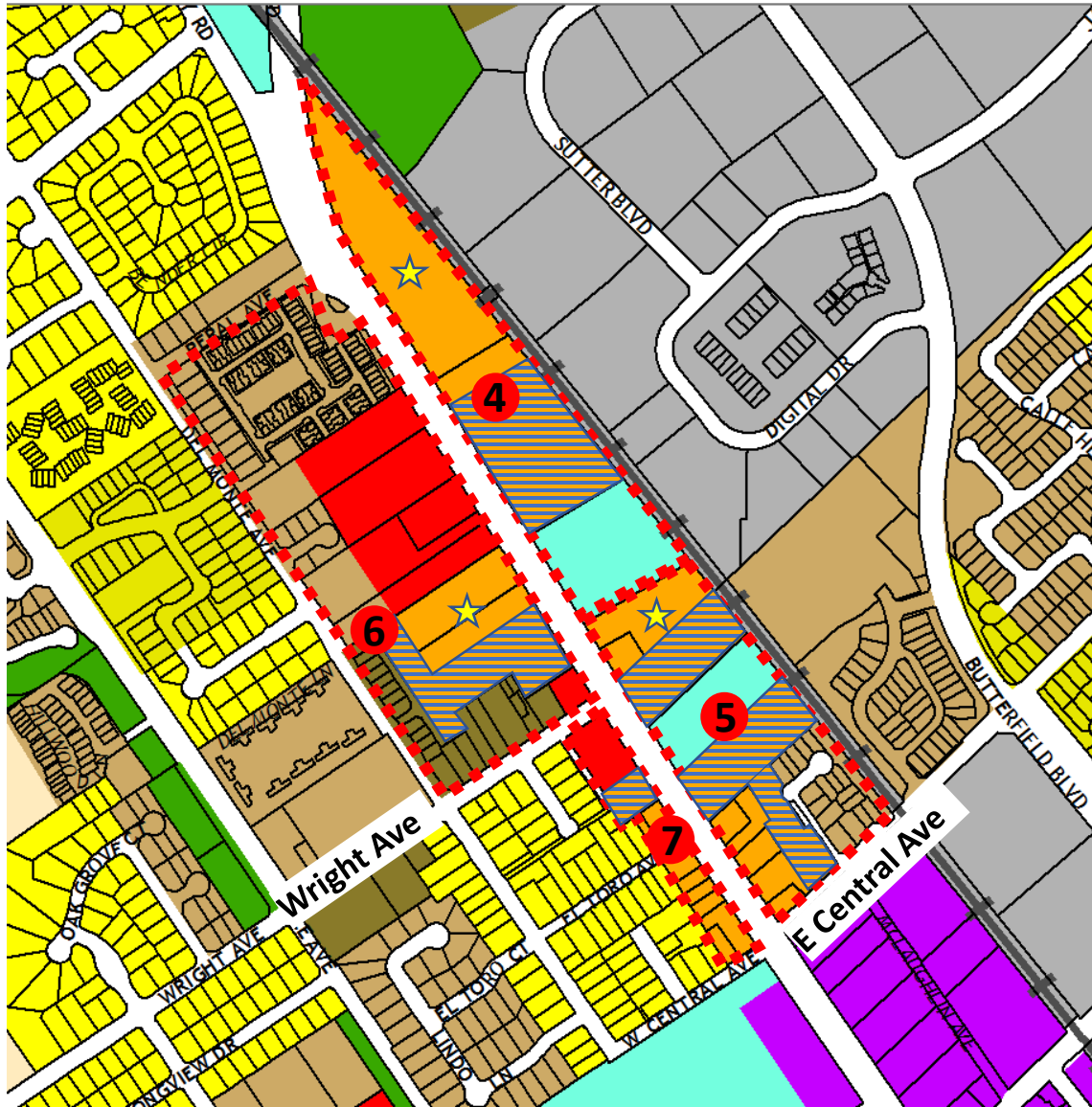
b



-  Mixed Use Flex Site
-  Block
-  Block Number
-  Mixed Use Flex Site Developed/Entitled & Unlikely to Redevelop
-  Vacant/Underutilized Opportunity Site

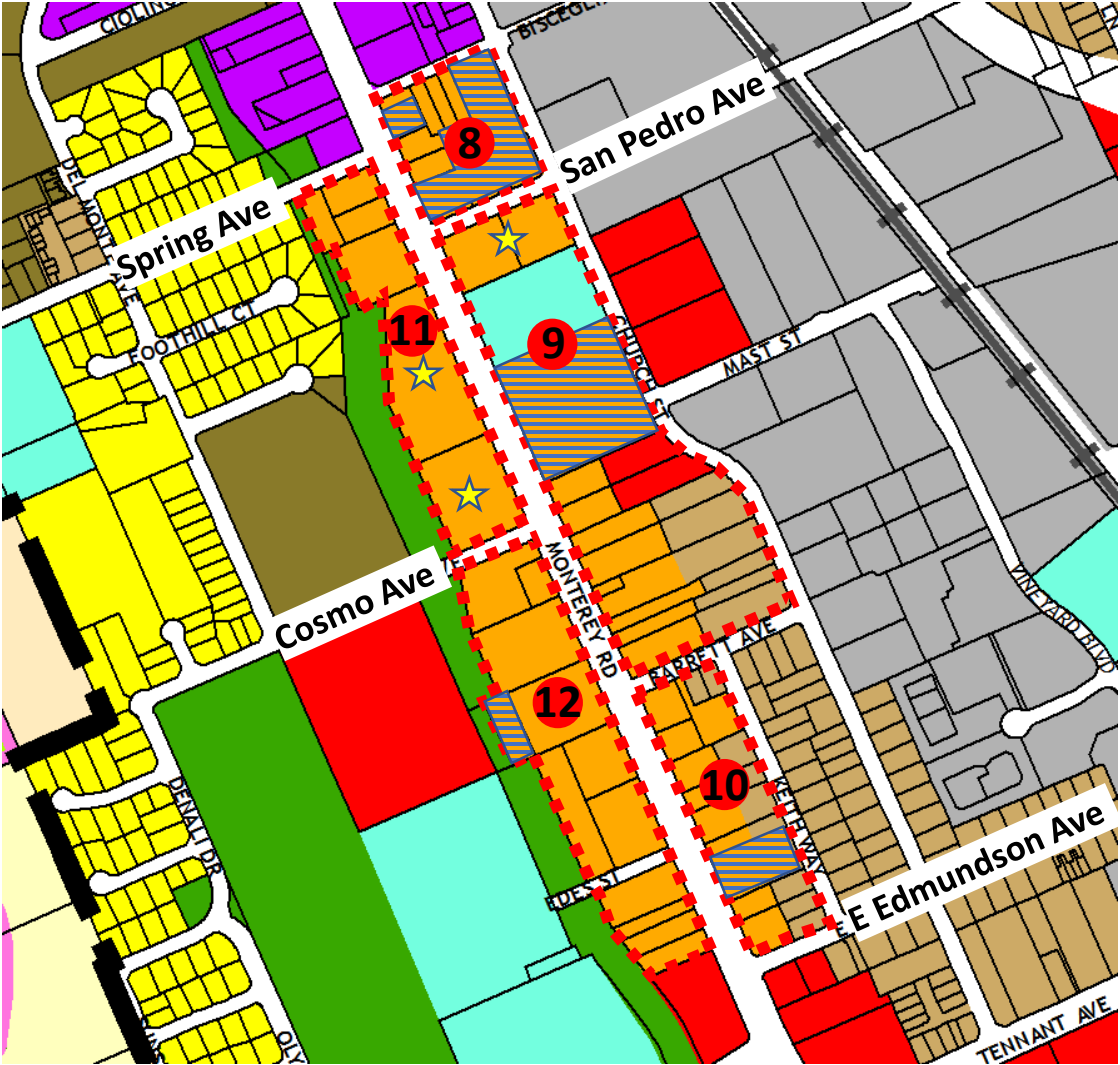
North of Downtown: RR Overcrossing to Central Avenue

b



- Mixed Use Flex Site
- Block
- # Block Number
- Mixed Use Flex Site Developed/Entitled & Unlikely to Redevelop
- Vacant/Underutilized Opportunity Site

South of Downtown: Bisceglia Avenue to Edmundson Avenue



-  Mixed Use Flex Site
-  Block
-  Block Number
-  Mixed Use Flex Site Developed/Entitled & Unlikely to Redevelop
-  Vacant/Underutilized Opportunity Site

18.30.010 – XX Overlay Zone (Name TBD)

- A. Purpose of the XX Overlay Zone.** The XX overlay zone is intended to provide a vibrant and walkable urban environment with buildings of high visual quality that frame the street. The XX overlay zone serves as the block-level master plan for residential and mixed use developments in the Monterey Corridor consistent with the General Plan and Section 18.22.030.
- B. Applicability.** All new buildings and development in the XX overlay zone must comply with the standards and requirements in this Section.
- C. Conflict with Other Zoning Code Standards.** Where the XX overlay zone standards conflict with other standards in the Zoning Code, the XX overlay zone standards shall control.
- D. Sub-Zones.**
1. **Purpose and Intent.** Sub-zones of the XX overlay zone include specific standards depending on the appropriate neighborhood and corridor contexts of the area. The general intent of the sub-zones is to reinforce built form as described in the General Plan and create a pedestrian-friendly environment. The specific purpose of each sub-zone is described below.
 - a. **Neighborhood Sub-Zone.** The purpose of the Neighborhood (N) sub-zone is to reinforce and enable medium intensity residential form within a mixed use environment.
 - b. **Corridor Sub-Zone.** The purpose of the Corridor (C) sub-zone is to provide a thriving mix of uses with a focus on ground-level, active building frontages facing the right-of-way.
- E. Permitted Land Uses.** Placeholder TBD [do not allow residential uses in areas where commercial should be required per commercial analysis].
- F. Frontage Types Allowed.** Buildings must be designed with a frontage type(s) allowed in the sub-zone by Table XX.

TABLE 18.30-XX: ALLOWED FRONTAGE TYPES – XX OVERLAY ZONE, SUB-ZONES

Frontage Type	N Sub-Zone		C Sub-Zone	
	Front	Street Side	Front	Street Side
Forecourt	A	-	A	A
Front Yard	A	A	-	-
Porch: Engaged	A	A	-	-
Porch: Projecting	A	A	-	-
Shopfront	A	A	A	A
Stoop	A	A	A	A
Terrace	A	A	A	A

G. Frontage Type Standards.

1. Forecourt.

- a. **Description.** The main façade of the building is at or near the right-of-way and a portion (usually the central portion) is set back, creating a courtyard space. The space could be used as an entry court or shared garden space for residential buildings, or as an additional shopping or restaurant seating area within retail and service use areas.
- b. **Standards.**

Size	
Width, Forecourt	20 ft. min.
Depth, Forecourt	20 ft. min.
Ratio, Width-to-Height of Forecourt	2:1 max.
Transparency, Ground Floor	70% min.
Transparency, Upper Floors	30% min.
Miscellaneous	
May be used in conjunction with another allowed frontage type (e.g., shopfront).	



Credit: Google Earth

2. Front Yard.

- a. **Description.** The main façade of the building has a large landscaped area between the building and the right-of-way providing a separation from the street. The front yard is visually continuous with adjacent yards and supports a landscape in conjunction with other private frontages.

- b. **Standards.**

Size	
Width, Front Yard	12 ft. min.
Depth, Front Yard	10 ft. min.
Height, Fences or Walls ¹	3 ft. max.
Miscellaneous	
Must be used in conjunction with another allowed frontage type (e.g., porch).	
Must be landscaped up to the property line.	

¹ Fences or walls must comply with Chapter 18.52 (Fences and Walls).



3. Porch: Engaged.

- a. **Description.** The main façade of the building has a small-to-medium setback from the right-of-way and a porch is attached within the setback providing access to the building. The porch provides necessary physical separation for the private lot from the public right-of-way. The engaged porch has two adjacent sides attached to the building while the other two sides are open.
- b. **Standards.**

Size	
Width, Porch	50% min.; 80% max. of building
Depth, Porch	5 ft. min.
Height, Clear (Floor to Cover)	8 ft. min.; 14 ft. max
Finish Level Above Sidewalk	3 ft. min.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
Porches must be open on two sides and have a roof.	



4. Porch: Projecting.

- a. **Description.** The main façade of the building has a small-to-medium setback from the right-of-way and a porch is attached within the setback providing access to the building. The porch provides necessary physical separation for the private lot from the public right-of-way. The projecting porch is open on three sides and projects in front of the primary building wall.
- b. **Standards.**

Size	
Width, Porch	70% min. of building
Depth, Porch	5 ft. min.
Height, Clear (Floor to Cover)	8 ft. min.; 14 ft. max
Finish Level Above Sidewalk	3 ft. min.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
Porches must be open on three sides and have a roof.	



5. Shopfront.

- a. **Description.** The main façade of the building is placed at or near the right-of-way with an at-grade entrance along the sidewalk. The shopfront is generally intended for retail or service uses and has substantial glazing at the ground floor level.

b. **Standards.**

Size	
Depth, Recessed Entries ¹	5 ft. max.
Transparency, Ground Floor	75% min.
Projection ²	
Depth	4 ft. min.
Setback From Curb	3 ft. min
Height	8 ft. min.
Miscellaneous	
May be used in conjunction with another allowed frontage type (e.g., terrace).	

¹ May be designed in a variety of configurations.

² May project over the sidewalk with an Encroachment Permit.



6. Stoop.

- a. **Description.** The main façade of the building is near the right-of-way and the elevated stoop engages the sidewalk. The stoop must be elevated above the sidewalk to ensure privacy within the building. The entrance is usually an exterior stair and landing.
- b. **Standards.**

Size	
Width, Stoop	4 ft. min.; 8 ft. max.
Depth, Stoop	5 ft. min.; 8 ft. max.
Finish Level Above Sidewalk	2 ft. min.; 4 ft. max.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
Stairs may be perpendicular or parallel to the building façade.	
Entry doors are encouraged to be covered or recessed.	
Gates are not allowed.	



7. Terrace.

- a. **Description.** The main façade of the building has an elevated terrace that projects outward and engages the sidewalk with frequent stairs. The terrace allows at-grade access to all ground floor uses due to natural grade constraints or by artificially elevating the terrace floor. The terrace acts as a buffer from the sidewalk and may be landscaped to provide additional privacy. Building activities are slightly separated from the adjacent sidewalk by the terrace finish level, and the depth of the terrace provides a buffer for outdoor seating, private yards, or any other appropriate uses.

b. **Standards.**

Size	
Depth, Terrace	8 ft. min.
Length, Terrace	120 ft. max.
Finish Level Above Sidewalk	4 ft. max. ¹
Distance Between Stairs	25 ft. max.
Wall Setback From Right-of-Way	5 ft. min.
Miscellaneous	
Reasonable accommodation must be provided as appropriate.	
May be used in conjunction with another allowed frontage type (e.g., shopfront).	

¹ Finish level may be adjusted for base flood elevation considerations.



H. Supplemental Standards. Placeholder TBD [pedestrian and bicycle access/connectivity; maximum block length; maximum building setback; parking behind buildings; 1st floor clear height and building depth for C Sub-Zone; open space/civic spaces for large sites].



PACIFIC OAK PROPERTIES, INC.

October 16, 2018

Morgan Hill City Council

Dear Mayor and Council Members:

I have reviewed the Monterey Corridor Block Level Master Plan.

I found the analysis to be well done and I agree with the conclusions reached for the various parcels along Monterey Road.

I do not believe that the City should force or require much more additional retail along the Monterey corridor. It is more important to keep existing commercial/retail centers strong and vibrant.

Providing land use flexibility along the corridor is a good thing, and this approach should serve the City well as properties along the corridor are developed or re-developed.

Thank you for your consideration.

Sincerely,

John P. Kent
President

Attachment: Letter from John Kent (2034 : Monterey Corridor BLMP Joint CC/PC Workshop)



DEVELOPMENT PROCESS CONSULTANTS

October 24, 2018

Attn: Morgan Hill City Council/Planning Commission

Re: Monterey Corridor Block-Level Master Plan joint workshop

Dear Mayor and Council Members,

Unfortunately I am unable to attend tonight's workshop. I do have a concern regarding the recommendations presented by Metrovation Consultants.

The criteria relating to frontage type standards which include, but not limited to porches, steps and stoops refers to setbacks and elevations without addressing ADA requirements. Various lots may have difficulty meeting both zoning and ADA requirements.

Hopefully this will be discussed this evening to allow for such provisions.

Thank you,

Vince Burgos
Development Process Consultants

Sent via email:

Steve.tate@morganhill.ca.gov
rich.constantine@morganhill.ca.gov
larry.carr@morganhill.ca.gov
rene.spring@morganhill.ca.gov
caitlin.jachimowicz@morganhill.ca.gov

Planning_Commission@morganhill.a.gov



Development Process Consultants

220 Live Oak Drive
Danville, CA. 94506



CITY COUNCIL STAFF REPORT

MEETING DATE: October 24, 2018

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: City Manager

ADOPT ORDINANCE APPROVING A DEVELOPMENT AGREEMENT DA2017-0008: LLAGAS-STROLATA (SILVA) FOR A 3-UNIT RESIDENTIAL DEVELOPMENT WITH REMAINDER LOT ON A 4.48- ACRE SITE LOCATED AT 1110 LLAGAS AVENUE (APN 773-32-013)

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2286, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Community Engagement and Messaging
Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

On October 17, 2018, the City Council introduced Ordinance No. 2286 New Series, by the following roll call vote: AYES: Carr, Constantine, Spring, Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

The project located at 1110 Llagas Avenue was awarded three residential allotments for Fiscal Year 2018-19. This Development Agreement solidifies the commitments that were pledged during the Residential Development Control System process.

COMMUNITY ENGAGEMENT: Inform

The Morgan Hill Community was informed about the project through public notification (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period and a sign was posted on the project site pursuant to the Planning Division Requirements.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On January 10, 2017, the Planning Commission adopted resolution No. 17-01, awarding the project three (3) FY2018-19 residential building allotments.

On June 6, 2018, the City Council adopted Ordinance No. 2277, approving a comprehensive update to Title 18 (Zoning), including an amendment to the City's Official Zoning Map. The update re-designated the project site from Residential Estate 40,000 square foot lots, to Residential Estate one-acre minimum lots, which provides consistency with the General Plan designation.

On September 25, 2018, the Planning Commission adopted resolution No. 18-24 unanimously recommending approval of the Development Agreement.

FISCAL AND RESOURCE IMPACT:

The City development review functions are cost-recovery, with fees collected from applications to cover cost services. These fees have been collected.

CEQA (California Environmental Quality Act):

An environmental assessment was prepared in conformance with the California Environmental Quality Act and determined the project Categorically Exempt pursuant to Section 15303, Class 3, relating to new construction of small structures, and Section 15315, Class 15, relating to Minor Land Divisions.

LINKS/ATTACHMENTS:

1. Ordinance 2286- Llagas-Strolata
2. Development Agreement DA2017-0008 Llagas - Strolata (Final)

ORDINANCE NO. 2286, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
APPROVING A DEVELOPMENT AGREEMENT DA2017-
0008: LLAGAS-STROLATA (SILVA) FOR A 3-UNIT
RESIDENTIAL DEVELOPMENT WITH REMAINDER LOT
ON A 4.48-ACRE SITE LOCATED AT 1110 LLAGAS
AVENUE (APN 773-32-013)**

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. The Planning Commission, pursuant to Chapter 18.78 (now Chapter 18.156) of the Morgan Hill Municipal Code, awarded 3 building allotments for application RDCS2016-0011 Llagas-Silvas for FY 2018-2019; and

SECTION 2. The City Council of the City of Morgan Hill enacted Ordinance Number 1594, as revised by Ordinance Number 2277, establishing a procedure for processing Development Agreements in Chapter 18.116 for projects receiving allotments through the Residential Development Control System, Chapter 18.156, of Title 18 of the Morgan Hill Municipal Code; and

SECTION 3. Sections 65864 through 65869.5 of the California Government Code authorize the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property; and

SECTION 4. Said Development Agreement request was considered by the Planning Commission at its regular meeting of September 25, 2018 at which time the Planning Commission recommended City Council approval of Development Agreement application DA2017-0008: Llagas-Strolata (Silva); and

SECTION 5. References are hereby made to certain Agreements on file in the office of the City Clerk of the City of Morgan Hill and attached as Exhibit A. These documents to be signed by the City of Morgan Hill and the property owner(s) set forth in detail the development schedule, the types of homes, and the specific restrictions on the development of the subject property. Said Agreement herein above referred to shall be binding on all future owners and developers as well as the present owners of the lands, and any substantial change can be made only after further public hearings before the Planning Commission and the City Council of this City.

SECTION 6. The City Council hereby finds that the development proposal and Development Agreement approved by this Ordinance is consistent with the goals, objectives, policies, general land uses, and programs specified in the General Plan and any applicable specific plan. The project would provide three single-family homes on minimum one-acre lots. There have been no General Plan policy conflicts identified with the proposed project.

SECTION 7. The City Council hereby finds that the Development Agreement is compatible with the uses authorized in the zoning district in which the real property is located because the housing

Attachment: Ordinance 2286- Llagas-Strolata (2029 : Adopt Ordinance 2286- Llagas Strolata)

development project is a permitted use within the Residential Estate zoning district and is compatible with the surrounding residential neighborhoods.

SECTION 8. The City Council has duly considered city mitigation programs in effect at the time of execution of the agreement and hereby finds that the project is subject to the payment of applicable impact fees and community benefit commitments as part of the RDCS process.

SECTION 9. The City Council hereby finds that the project will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood because project construction would adhere to state, local and federal laws. The project is residential housing that would include the normal daily operations of other residential sites.

SECTION 10. The City Council of the City of Morgan Hill finds that the Development Agreement complies with the provisions of the California Environmental Quality Act (CEQA) and city's procedures adopted pursuant thereto. The City Council further finds that, on the basis of the whole record before it, there is no substantial evidence that the project as currently proposed will have a significant effect on the environment and therefore finds the project Categorically Exempt pursuant to Class 3, Section 15303 relating to New Construction of Small Structures, and Class 15, Section 15315 relating to Minor Land Divisions, of the CEQA and this finding reflects the City Council's independent judgment and analysis. The custodian of the documents or other material which constitute the record shall be the Development Services Department.

SECTION 11. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values because the project will provide high quality architecture consistent with the City's Architectural Design Guidelines. The project will also be consistent with state and local laws.

SECTION 12. Testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

SECTION 13. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 14. Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance or a summary thereof pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 17TH DAY OF OCTOBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 24TH DAY OF OCTOBER 2018 AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

APPROVED:

STEVE TATE, Mayor

ATTEST:

DATE:

IRMA TORREZ, City Clerk

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2286, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 24th day of October 2018.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Ordinance 2286- Liagas-Strolata (2029 : Adopt Ordinance 2286- Liagas Strolata)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

STROLATA PROPERTIES, LLC

REGARDING

**THE RDCS2016-0011 LLAGAS- STROLATA (SILVA) RESIDENTIAL
DEVELOPMENT PROJECT**

Attachment: Development Agreement DA2017-0008 Llagas - Strolata (Final) (2029 : Adopt Ordinance 2286- Llagas Strolata)

RESIDENTIAL DEVELOPMENT AGREEMENT
 BY AND BETWEEN
 THE CITY OF MORGAN HILL
 AND
 STROLATA PROPERTIES, LLC
 REGARDING THE
 LLAGAS- STROLATA (SILVA) RESIDENTIAL PROJECT

This Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the City of Morgan Hill, a California municipal corporation, (hereinafter "**City**"), and Strolata Properties, LLC, a California limited liability company, and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to Section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its Morgan Hill Municipal Code (Chapter 18.116 *et seq.*) ("**Enabling Ordinance**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Ordinance.

B. Developer currently has a legal and/or equitable interest in the Property.

C. Developer proposes to plan, develop, construct, operate and maintain the Project on the Property (as such terms are defined herein).

D. As of the Effective Date, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively "**Existing Approvals**"), including without limitation, all of the following:

1. **Allotments Approved Pursuant to RDCS Applications: RDCS2016-0011**, and conditions attached to the award of such allotments;
2. **Environmental Impact Assessment EA2017-0016**; and

E. On January 10, 2017, the Morgan Hill Planning Commission awarded an allotment for the Project as set forth in the Developer's application for residential allotments pursuant to Chapter 18.156 ("**Residential Development Control System**", or "**RDCS**") of the Morgan Hill Municipal Code ("**Code**"). This Agreement serves to secure in a permanent and enforceable manner the public benefits and commitments included in the Developer's application as required under Section 18.156.120.J of the Code.

F. On September 25, 2018, following a duly noticed and conducted public hearing, the Planning Commission of the City ("**Planning Commission**") considered the Development Agreement for recommendation to the City Council, and determined that the Development Agreement is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan; is compatible with the uses authorized in the zoning district in which the real property is located; duly considers City mitigation programs in effect at the time of execution of the agreement; will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood; complies with the provisions of the California Environmental Quality Act and City's procedures adopted pursuant thereto; and will not adversely affect the orderly development of property or the preservation of property values.

ARTICLE 1

ADMINISTRATION

1.01 Effective Date. Following a duly noticed and conducted public hearing, the Morgan Hill City Council ("City Council") introduced an ordinance ("**Ordinance**"), accepting the recommendation of the Planning Commission, finding that its provisions are consistent with the General Plan and any applicable specific plan, approving this Agreement, and directing this Agreement's execution by City. The City adopted the Ordinance, and the Ordinance became effective thirty (30) days later. The "Effective Date" in this Agreement shall be the date that the Ordinance became effective.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

- (1) "**Allotments**" shall mean those residential allotments awarded Developer through the Residential Development Control System
- (2) "**Applicable Law**" shall have that meaning set forth in Section 2.01(a) of this Agreement.
- (3) "**Commitments**" shall have that meaning set forth in Section 2.04(a) of this Agreement.
- (4) "**Director**" shall mean the Director of Community Development, and his or her designee.

- (5) **"Existing Approvals"** shall have that meaning set forth in paragraph D of the Recitals of this Agreement.
- (6) **"Existing City Laws"** shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, RDCS, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.
- (7) **"Impact Fees"** shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 *et seq.*
- (8) **"Legal Effect"** shall mean the ordinance, resolution, permit, license or other grant of approval that has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.
- (9) **"New City Laws"** shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes **"Legal Effect"** after the Effective Date of this Agreement, and that applies City wide.
- (10) **"Project"** means the development containing **three residential building allotments for Fiscal year 2018-2019 containing three single-family homes on property identified by Assessor Parcel Number 773-32-013**, as more particularly described in the RDCS2016-0011 as described in Exhibit B. Any reference in this Agreement to the "Project" shall mean and include the "Property".
- (11) **"Project Approvals"** mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.
- (12) **"Property"** shall mean that certain real property consisting of approximately 4.2 gross acres located within the City, as more particularly described and shown on Exhibit A to this Agreement.
- (13) **"RDCS"** means the Residential Development Control System set forth in Chapter 18.156 of the Morgan Hill Municipal Code.
- (14) **"Second Notice"** shall have that meaning set forth in Section 4.07(c) of this Agreement.

- (15) **"Subdivision Document"** means, pursuant to Government Code Section 66452.6(a) and this Agreement, any tentative map, vesting tentative map, parcel map, or final map, or any such new map or any amendment to any such map, or any resubdivision.
- (16) **"Subsequent Approvals" and "Subsequent Approval"** mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Ordinance, including without limitation, subdivision maps and building permits.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law, including the Morgan Hill Municipal Code.

1.03 Term.

(a) The term ("**Term**") of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated or modified as provided in this Agreement) until the earliest of (1) the loss of all residential allotments for the Project pursuant to the RDCS, if applicable, (2) the issuance of a certificate of occupancy for all units in the Project or (3) ten (10) years plus one day after the Effective Date; provided however that Developer's obligations pursuant to Sections 2.03 and 2.04 shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with this Agreement.

(b) If any "**Third-Party Challenge**" (as that term is defined in Section 4.06(a) of this Agreement) is filed, then the Term of this Agreement shall be tolled for the period or periods of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or entry of a final judgment ("**Litigation Tolling**"). Notwithstanding the foregoing, regardless of the number of Third-Party Challenges that may be filed during the Term of this Agreement, the sum total of such Litigation Tolling shall not exceed five (5) years. The filing of any Third-Party Challenge shall not delay or stop the development, processing or construction of the Project, or the approval or issuance of any Project Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

ARTICLE 2

APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, "**Applicable Law**" shall mean the rules, regulations, official policies, standards, and specifications applicable to the development of the Property listed below in this Section 2.01. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

- (1) All the provisions, terms and conditions of this Agreement.
- (2) Existing Approvals.
- (3) The Subsequent Approvals, provided such Subsequent Approvals are:
 - (i) In compliance with all controlling California law;
 - (ii) Mutually agreed to by the Parties;
 - (iii) In compliance with this Agreement; and
 - (iv) Duly enacted by City.
- (4) The "Existing City Laws" that are not in conflict with this Agreement and the Project Approvals.
- (5) Any "New City Laws" Developer is subject to as provided in Section 2.09 of this Agreement.

(b) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

2.02 Vested Right to Applicable Law.

(a) During the Term of this Agreement, Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, and during the Term of this Agreement, City shall have the right to regulate the development and use of the Project subject only to, and in accordance with, the Applicable Law.

(b) Nothing contained herein will give Developer a vested right to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

(c) Pursuant to this Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City, and/or when Developer becomes subject to a New City Law pursuant to this Agreement.

(d) The vested rights to develop the Project in accordance with Applicable Law and this Agreement shall be vested only to those residential units having an RDSCS residential allotment. Nothing contained herein shall give Developer a vested right to develop the described Project absent valid RDSCS residential allotments.

(e) Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to develop in lieu of any other instrument of vesting, including any vesting tentative map or any other

agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable City, state or federal law.

2.03 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Developer. Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts, Homeowners Associations, and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, in its sole and exclusive discretion, pursuant to appropriate City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(b) Impact Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04 and as part of the Developer's sole and exclusive obligation to cover Project Mitigation, Developer shall pay all Impact Fees and in the amounts in legal effect at the time any such Impact Fees become due and payable as provided for in the City's Municipal Code.

(c) Processing Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04, the Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, and environmental studies required pursuant to CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Developer. Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such

Attachment: Development Agreement DA2017-0008 Llagas - Strolata (Final) (2029 : Adopt Ordinance 2286- Llagas Strolata)

employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.04 RDCS and Other Specific Project-Specific Requirements.

(a) The Specific Restrictions and Requirements set forth in Exhibit C are public benefit commitments (“**Commitments**”) voluntarily assumed by Developer in return for benefits derived from the City's RDCS allotment approval program. These requirements are not Project Mitigation within the meaning of Section 2.03 of this Agreement. Developer hereby agrees that these requirements are not subject to credit, refund or reimbursement or prohibition pursuant to otherwise applicable City, state or federal law and hereby waives any such right to credit, refund, reimbursement or prohibition. These Commitments are voluntarily assumed by Developer in return for benefits derived from the RDCS. Pursuant to the RDCS, awarding of residential allotments to new development is a competitive process based on a point system. Additional points can be awarded to a development proposal that voluntarily commits towards providing a public benefit contribution in addition to those already required to mitigate its impacts. The Commitments result in additional points, thereby allowing the development proposal to secure a higher score pursuant to the RDCS, which in turn may provide a high enough score for the development proposal to secure residential allotments. The Commitments set forth in Exhibit C, derived from that RDCS process, are enforced through this Agreement.

(b) Substitution of Commitments within the same Objective may be allowed in limited circumstances, as provided in Section IV. F of the RDCS Competition Manual, with approval of the Community Development Director documented through an Administrative Amendment as provided in Section 3.05 of this Agreement. Substitution may be allowed only if the proposed changes result in the project receiving the same or higher score within each Objective, maintain or improve the quality of the project, and would result in the same or greater value to the City or its future residents. No changes which would subject the Project to further environmental review under CEQA shall be approved. In circumstances in which Substitution within the same Objective is not possible, Substitution may be allowed only by resolution of the Planning Commission.

(c) The Developer’s RDCS application – RDCS2016-0011 - and approval actions on January 10, 2017 (as reflected in the official records, including agendas and minutes of the City Planning Commission and City Council) shall be incorporated into this Agreement by this reference.

2.05 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as “**Construction Codes**”) in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

Attachment: Development Agreement DA2017-0008 Llagas - Strolata (Final) (2029 : Adopt Ordinance 2286- Llagas Strolata)

2.06 Timing of Development.

(a) Securing Building Permits and Beginning Construction. Developer is required to obtain any approvals or permits for the development of the Project in accordance with this Agreement, the Applicable Law, and the Project Approvals. However, any Subsequent Approval initiated by Property Owner which substantially changes the permitted uses or substantially increases the height, and density or floor area allowed under the Project Approvals, shall be subject to the rules, regulations, ordinances and official policies of the City then in effect. Developer agrees to secure building permits and to begin construction of the Project in accordance with the time requirements set forth in the Construction Codes and the RDCS, if applicable. In the event Developer fails to comply with the above permit issuance and beginning construction dates, and satisfactory progress towards completion of the project in accordance with the Construction Codes, Project Approvals, and RDCS, Developer shall be in default of this Agreement, and must cure said default as provided in section 4.01 of this Agreement.

(b) Progress Reports Until Construction of Project is Complete. Developer shall make reports regarding the progress of construction in such detail and at such time as the Community Development Director of the City of Morgan Hill reasonably requests.

(c) City of Morgan Hill to Receive Construction Contract Documents. If the City reasonably requests copies of construction, off-site and landscaping contracts or documents, Developer agrees to furnish such documents to the City.

(d) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units in the Project, the City shall provide Developers with an instrument in recordable form certifying completion of the entire project.

2.07 Improvements.

In any instance where Developer is required to install improvements (including those set forth in Exhibit C), Developer shall obtain City approval of the plans and specifications and the timing and manner of the installation of improvements, and provided Developer has supplied all information required by City, City shall review and act on the application for such approval with good faith and in a reasonable manner. Where the actual cost of any improvement exceeds Developer's estimated cost or commitment, Developer shall be solely responsible for all improvement costs in excess of those approved by City unless otherwise provided for in a reimbursement agreement.

2.08 Overcapacity, Oversizing.

(a) City may require Developer to construct on-site and off-site improvements in a manner that provides for oversizing or overcapacity so that the constructed improvement will serve other development or residents or facilities and services outside of the Project ("**Oversizing**"). Such Oversizing shall be reasonable in scope. The Parties recognize that the City shall not require any Oversizing from Developer except in connection with the Project Approvals and in accordance with provisions of the Subdivision Map Act and Applicable Law.

(b) Unless no credit or reimbursement is owed to Developer pursuant to Section 2.04 of this Agreement, Developer's right to receive credits and reimbursements for Oversizing or excessive

payment or performance shall be determined and processed pursuant to the City's Municipal Code and controlling practices (relative to credits and reimbursements) on the Effective Date.

2.09 New City Laws.

(a) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes, nor otherwise reduces the development rights or assurances provided by this Agreement. City shall not apply to the Project nor Property any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development.

(b) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals.

(c) If City determines that it has the right pursuant to this Agreement to impose and apply a New City Law on the Property and Project, it shall send written notice to Developer of that City determination ("**Notice of New City Law**"). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of City's Notice of New Law ("**Objection to New City Law**"). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law to the Property/Project. City shall respond to Developer's Objection to New City Law ("**City Response**") within thirty (30) days of

receipt of said Developer Objection to New City Law. The City Response shall set forth the factual and legal reasons why City believes it can apply the New City Law to the Project. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City Response (the "**Meet and Confer Period**") with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to "impose/apply" the New City Law to the Project, then Developer shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law shall commence upon Developer's receipt of City's determination following the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law, such New City Law shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law (*e.g.*, City return fees, return dedications, etc.). The above-described procedure shall not be construed to interfere with City's right to adopt or apply the New City Law with regard to all other areas of City (excluding the Project).

(d) Developer in its sole and absolute discretion may elect to have applied to the Project a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (d). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve Developer from, or impede Developer's compliance with, Developer's obligations pursuant to this Agreement, including without limitation Developer's obligations of full "Project Mitigation" pursuant to Section 2.03 or the "RDCS and Other Project Specific Requirement" pursuant to Section 2.04. Further, for the purposes of this Agreement, the "New City Laws" Developer may elect to be subject to pursuant to this Section shall not mean nor include any or all individual development agreements with other developers (including without limitation such development agreements' term and conditions, exhibits, etc.) executed before or after the Effective Date of this Agreement.

(e) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal laws or regulations, and implemented through the Federal, State, regional and/or local level ("**Mandated New City Laws**"), including without limitation those provisions in the Development Agreement Statute, or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(f) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is authorized in the Existing Approvals. This Agreement simply provides a process by which such Subsequent Approvals may be processed by Developer, and later added to this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including Planning and Zoning Law and CEQA), and are adopted/approved by City, which shall retain all lawful discretion in this regard. The public review process is ongoing, and following the City's adoption of this Agreement, that public review process shall continue. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regard to the Project Approvals that legally require the exercise of discretion by City. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by the Applicable Law. The Parties agree that this Agreement does not modify, alter or change the City's obligations pursuant to CEQA and acknowledge that Subsequent Approvals may require additional environmental review pursuant to CEQA.

(b) Upon submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement, City shall use its best efforts to promptly commence and diligently complete all steps necessary to acting on the requested Subsequent Approvals, including, but not limited to, (i) the holding of any and all required public hearings and notice for such public hearings, and (ii) the granting of the requested approval to the extent that it is consistent with Applicable Law.

3.02 Significant Actions by Third Parties Necessary to Implement the Existing Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

(b) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially deprives Developer of the ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.03 Establishment and Extension of Residential Development Control System Building Allotments.

Allotments shall be exercised pursuant to Section 18.156.160 of the Morgan Hill Municipal Code and Section IV.J of the RDCS Competition Manual. The City may approve an extension to the date by which an allotment must be exercised only as allowed by Section 18.156.170 of the City of Morgan Hill Municipal Code and Section IV.L of the RDCS Competition Manual. Extensions shall be processed by Planning Commission resolution as provided in Section IV.H of the RDCS Competition Manual.

3.04 Amendments.

This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868. Any request by Developer for an amendment or modification to this Agreement or a Project Approval shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved.

3.05 Administrative Amendment

Upon the written request of, and payment of the established fee by, Developer may request, Substitution of Commitments within the same criteria category may be processed administratively by the Community Development Director. Any Administrative Amendment must be made in writing approved by the Director, and approved by the City Attorney, and signed by the Developer.

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

(a) Any failure by City or Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days (or 150 days for a Mortgagee (as that term is defined in Section 4.10(a)) following written notice of such failure from the other Party (unless such period is extended by written mutual consent) ("**Notice of Default**"), shall constitute a default pursuant to this Agreement ("**Default**"). Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period (or 150 days for a Mortgagee), then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period (or 150 days for a Mortgagee). If the alleged failure is cured, then no Default shall exist and the noticing Party shall take no further action. If the alleged failure is not cured, then a Default shall exist pursuant to this Agreement and the non-defaulting Party may exercise any of the remedies available pursuant to this Article.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a

prerequisite to the enforcement or correction of any default. Waiver of a breach or default pursuant to this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Actions During Cure Period.

(a) During any cure period and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder to the maximum extent practicable in light of the disputed matter and pending its resolution, or formal termination of the Agreement, as provided herein.

(b) City will continue to process in good faith development applications during any cure period, but need not approve any such application if it relates to an alleged default of Developer hereunder.

4.03 Resolution of Disputes.

(a) In the event either Party is in default pursuant to the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to Developer for a breach or violation of this Agreement by City shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that Developer shall not be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action pursuant to this Agreement, any City Council determination pursuant to this Agreement shall be deemed a final agency action.

(c) If any dispute arises between or among the Parties as to interpretation or application of any of the terms of this Agreement, the Parties shall attempt to resolve the dispute in accordance with this Agreement prior to third party mediation, arbitration, or formal court action. As to any such dispute, the Parties shall first meet and confer in good faith to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party or Parties all information relevant to the dispute, to the end that all Parties will have appropriate and adequate information to resolve the dispute. Should the Parties not resolve the dispute informally, the Parties agree to meet and confer in an effort to agree on utilizing Judicial Arbitration Mediation Services ("JAMS") for Alternative Dispute Resolution ("ADR"). However, no party shall be required to use JAMS or ADR.

4.04 Periodic Review.

(a) The City shall review this Agreement at least once annually to assure compliance with the RDCS, at which time the Developer is required to demonstrate good faith compliance with the terms of this Agreement.

(b) If, as a result of such annual review, the City finds and determines, on the basis of substantial evidence, that Developer has not complied in good faith with the terms or conditions of this Agreement, the City may rescind all or part of the allotments awarded pursuant to the RDCS, in addition to all other legally available remedies.

4.05 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.06 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review pursuant to CEQA ("**Third-Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

(b) City shall have the option to defend such Third-Party Challenge or to tender the complete defense of such Third-Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third-Party Challenge or Developer refuses City's Tender, City shall control all aspects of the defense and Developer shall pay City's attorneys' fees and costs (including related court costs).

(c) If Developer accepts City's Tender, Developer shall control all aspects of the defense and shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third-Party

Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys' fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.07 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(2) The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations pursuant to this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(b) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within ten (10) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.07(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.08 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an

interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement ("**Assignee**"). Developer shall provide City with written notice of any assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed assignment shall be subject to the express written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned. City's approval of a proposed assignment or transfer shall be based upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out the development of the Property to completion. The written assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall specify the portion of the Project or Property and the rights assigned and obligations assumed, and shall be approved by the City Attorney. The express written assumption by an Assignee of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations pursuant to this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form as may be approved by the City Attorney.

(b) Release Upon Assignment. Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Developer's rights and interests pursuant to this Agreement, Developer shall be released from its obligations with respect to the Property/Project (or any portion thereof), and any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the effective date of such assignment. A default by any Assignee shall only affect that portion of the Property/Project owned by such Assignee and shall not cancel or diminish in any way Developer's rights or obligations hereunder with respect to the assigned portion of the Property/Project not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property/Project owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property/Project owned by such Assignee.

(c) Covenants Run with the Land. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code Section 1468. This Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee, or any other successor of Developer acquiring a completed residential unit comprising all or part of the Project ("**Consumer**") unless such Consumer is specifically bound by a provision of this Agreement or by a separate instrument or Agreement.

4.09 Encumbrances on the Property.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole and absolute discretion, from encumbering the Property, or any portion thereof or any

improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project. Mortgagee may require certain modifications to this Agreement, and City shall negotiate in good faith any such request for modification or subordination.

4.10 Obligations and Rights of Mortgage Lenders.

(a) The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof ("**Mortgagee**"), shall not be obligated pursuant to this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest.

(b) Each Mortgagee shall be entitled to receive written notice from City of results of the annual review to be done pursuant to Section 4.04 and any default by Developer pursuant to this Agreement, provided such Mortgagee has informed City of its address for notices. Each Mortgagee shall have a further right, but not an obligation, to cure such default in accordance with the default and default cure provisions in Sections 4.01, 4.02, and 4.03 of this Agreement. In the event Developer (or any permitted Assignee) becomes subject to an order for relief pursuant to any chapter of Title 11 of the United States Code (the "**Bankruptcy Code**"), the cure periods provided for a Mortgagee in Section 4.01(a) of this Agreement shall be tolled for so long as the automatic stay of Section 362 of the Bankruptcy Code remains in effect as to Developer (or any permitted Assignee); provided, however, if City obtains relief from the automatic stay pursuant to Bankruptcy Code Section 362 to declare any default by or exercise any remedies against Developer (or any permitted Assignee), the tolling of any Mortgagee's cure period shall automatically terminate on the earlier of: (i) the date that is sixty days after entry of the order granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Mortgagee relief from the automatic stay. Each Mortgagee shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the automatic stay of Section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

(c) Any Mortgagee who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Property, or such portion thereof, that have accrued prior to the time such holder comes into possession. In addition, any Mortgagee who comes into possession of the Property or any portion thereof, pursuant to a foreclosure of mortgage or deed of trust, or deed in lieu of such foreclosure, shall, subject to Section 4.10(a) above, be a permitted Assignee and, as such, shall succeed to all the rights, benefits and obligations of Developer pursuant to this Agreement.

(d) Nothing in this Agreement shall be deemed to be construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereof, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

4.11 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Requirements of Development Agreement Statute. The permitted uses of the Property; density and/or intensity of use of the Property; the maximum height and size of proposed buildings and other structures; provisions for reservation or dedication of land for public purposes; location of public improvements; and other terms and conditions applicable to the Project shall be those set forth in the Applicable Law.

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced pursuant to or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court.

(d) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(e) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security

with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

(f) Insurance. Developer shall, during the life of this Agreement take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California as will protect the Developer or any Contractor or any Subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, from claims for damages because of bodily injury, sickness, disease, or death of their employees or any person other than their employees, or for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom. The minimum limits of liability for such insurance coverage which shall include comprehensive general and automobile liability, including contractual liability assumed pursuant to this Agreement, shall be as follows:

Limit of Liability for Injury or Accidental Death:

Per Occurrence \$1,000,000

Limit of Liability for Property Damage:

Aggregate Liability for Loss \$1,000,000

Such liability insurance policies shall name the City as an additional insured, by separate endorsement, and shall agree to defend and indemnify the City against loss arising from operations performed pursuant to this agreement and before permitting any Contractor or Subcontractors to perform work pursuant to this agreement, the Developer shall require Contractor or Subcontractors to furnish satisfactory proof that insurance has been taken out and is maintained similar to that provided by the Developer as it may be applied to the Contractor's or Subcontractor's work.

(g) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(h) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed, via first class mail, to the respective Party at the below listed address. Notice shall be deemed effective and received five days after the date of mailing or upon personal delivery.

If to City: City Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7259
Fax: (408) 779-3117

With a Copy To: City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7271
Fax: (408) 779-1592

If to Developer: Strolata Properties, LLC
1999 South Bascom Avenue, Suite 700
Campbell, CA 95008
Tel: (408)848-0300
Email: Paul@latalahomes.com

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(i) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(j) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(k) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed pursuant to the laws of the State of California.

(l) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(m) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(n) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

(o) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description of Lot on Which Project is to be Located.

Exhibit B Description of Project.

Exhibit C RDCS Specific Restrictions and Requirements.

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:

s/ _____

Christina J. Turner
City Manager

Date: _____

Attest:

s/ _____

Deputy City Clerk

Approved as to Form:

s/ _____

Donald A. Larkin
City Attorney

Date: _____

DEVELOPER:

Paul Latala, Strolata Properties L

s/ _____

member

Name/Title [print]

Corporate entities must provide a second signature:

s/ _____

Name/Title [print]

Date: _____

Adopted By Ordinance Number _____
by action of City Council on _____

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

Attachment: Development Agreement DA2017-0008 Liagas - Strolata (Final) (2029 : Adopt Ordinance 2286- Liagas Strolata)

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY ON WHICH

PROJECT IS BE LOCATED

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MORGAN HILL, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

PARCEL 1, AS SHOWN UPON THAT CERTAIN MAP ENTITLED "PARCEL MAP PORTION OF LOT 46 OF THE MORGAN HILL RANCH MAP NO. 3, BOOK G OF MAPS, PAGES 20 AND 21", WHICH MAP WAS FILED FOR CALIFORNIA ON NOVEMBER 10, 1972 IN BOOK 312 OF MAPS, AT PAGE 1.

EXCEPTING FROM THE ABOVE DESCRIBED PARCEL ONE, AN UNDIVIDED 4/5 INTEREST IN AND TO THAT PORTION OF SABINI COURT, AS SHOWN UPON THAT CERTAIN PARCEL MAP ABOVE REFERRED TO.

ALSO EXCEPTING FROM THE ABOVE DESCRIBED PARCEL ONE, AN UNDIVIDED 4/5 INTEREST IN AND TO A STRIP OF LAND 16.50 FEET IN WIDTH, THE SOUTHWESTERLY LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTHWEST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO ADAH A. WALKER, RECORDED JANUARY 4, 1902, BOOK 249 OF DEEDS, PAGE 288, AT THE MOST WESTERLY CORNER OF SAID WALKER PARCEL IN THE NORTHWEST LINE OF SAID LOT 46; THENCE FROM SAID POINT OF BEGINNING ALONG SAID SOUTHWEST LINE OF THE WALKER PARCEL SOUTH 40° 15' EAST 984.39 FEET TO THE MOST SOUTHERLY CORNER OF SAID WALKER PARCEL.

PARCEL TWO:

A NON-EXCLUSIVE RIGHT OF WAY CREATED APPURTENANT TO PARCEL ONE ABOVE IN THE DEED FROM ROBERT M. WELCH, RECORDED MAY 7, 1898, BOOK 210 OF DEEDS, PAGE 55, OVER A PORTION OF LOT 46, AS SHOWN ON MORGAN HILL RANCH MAP NO. 3, FILED SEPTEMBER 21, 1892, BOOK G OF MAPS, PAGE 20, SANTA CLARA COUNTY RECORDS, BEING A STRIP OF LAND 33 FEET WIDE, THE NORTHWEST LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE COMMON CORNER FOR LOTS 15, 17, 45 AND 46 IN THE CENTER LINE OF LLAGAS AVENUE AS SHOWN ON SAID MAP; THENCE FROM SAID POINT OF BEGINNING ALONG THE NORTHWEST LINE OF SAID LOT 46 SOUTH 49° 45' WEST 73.92 FEET.

PARCEL THREE:

Attachment: Development Agreement DA2017-0008 Llagas - Strolata (Final) (2029 : Adopt Ordinance 2286- Llagas Strolata)

A NON-EXCLUSIVE EASEMENT AND RIGHT OF WAY CREATED IN THE DEED TO PETER SABINI, RECORDED JANUARY 16, 1934, BOOK 674 OFFICIAL RECORDS, PAGE 73, FOR INGRESS AND EGRESS OVER A PORTION OF LOT 46, AS SHOWN ON MORGAN HILL RANCH MAP NO. 3, FILED SEPTEMBER 21, 1892, BOOK G OF MAPS, PAGE 20, SANTA CLARA COUNTY RECORDS, BEING A STRIP OF LAND 16 FEET WIDE, THE NORTHWEST LINE OF WHICH IS DESCRIED AS FOLLOWS:

BEGINNING ON THE NORTHWEST LINE OF SAID LOT 46, DISTANT THEREON SOUTH 49° 45' WEST ALONG SAID NORTHWEST LINE 30 FEET.

PARCEL FOUR:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES OVER A PORTION OF LOT 46, AS SHOWN ON MORGAN HILL RANCH MAP NO. 3, FILED SEPTEMBER 21, 1892, BOOK G OF MAPS, PAGE 20 SANTA CLARA COUNTY RECORDS, BEING A STRIP OF LAND 30 FEET WIDE, THE NORTHEAST LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED TO ADAH A. WALKER, RECORDED JANUARY 4, 1902, BOOK 249 OF DEEDS, PAGE 288, AT THE SOUTHEAST LINE OF BOOK 674 OFFICIAL RECORDS, PAGE 73, SAID POINT ALSO BEING SOUTH 40° 15' EAST 16 FEET FROM THE NORTHWEST LINE OF SAID LOT 46; THENCE FROM SAID POINT OF BEGINNING ALONG SAID NORTHEAST LINE OF THE WALKER PARCEL SOUTH 40° 15' EAST 17.00 FEET TO THE TERMINUS OF THIS EASEMENT.

PARCEL FIVE:

A NON-EXCLUSIVE EASEMENT CREATED IN THE DEED TO CLASSINA SABINI, RECORDED JANUARY 1, 1972, BOOK 9859 OFFICIAL RECORDS, PAGE 372 FOR INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES OVER A PORTION OF LOT 46, AS SHOWN ON MORGAN HILL RANCH MAP NO. 3, FILED SEPTEMBER 21, 1892 IN BOOK G OF MAPS, PAGE 20 SANTA CLARA COUNTY RECORDS, BEING A STRIP OF LAND 33 FEET WIDE, THE NORTHWEST LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST LINE OF SAID LOT 46, DISTANT THEREON SOUTH 49° 45' WEST 103.92 FEET FROM THE COMMON CORNER FOR LOTS 15, 17, 45 AND 46 IN THE CENTER LINE OF LLAGAS AVENUE, AS SHOWN ON SAID MAP; THENCE FROM SAID POINT OF BEGINNING SOUTH 49° 45' WEST ALONG SAID NORTHWEST LINE 412.53 FEET.

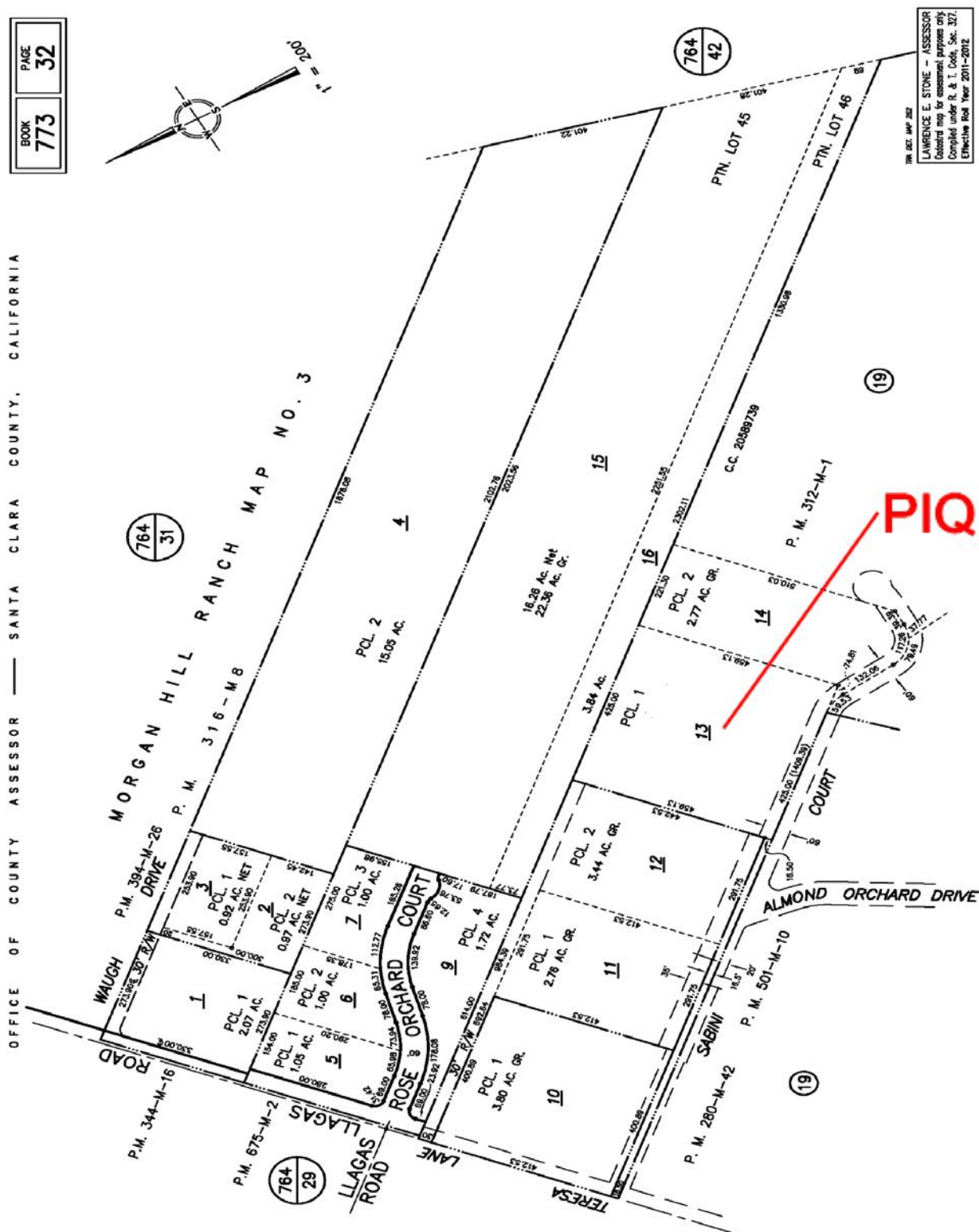
PARCEL SIX:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND FOR THE INSTALLATION AND MAINTENANCE OF PUBLIC UTILITIES OVER A 16.5 FOOT STRIP OF LAND THE SOUTHWESTERLY LINE OF WHICH IS DESCRIBED AS FOLLOWS:

A PORTION OF LOT 46, AS SHOWN ON MORGAN HILL RANCH MAP NO. 3, RECORDED SEPTEMBER 21, 1892 IN BOOK "G" OF MAPS, AT PAGE 20, SANTA CLARA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF PARCEL 2 AS SHOWN ON THE "PARCEL MAP" RECORDED MARCH 29, 1971 IN BOOK 280 OF MAPS, AT PAGE 42, SANTA CLARA COUNTY RECORDS; THENCE NORTH 40° 15' EAST ALONG THE SOUTHWESTERLY LINE OF PARCEL 2 AND PARCEL 1 OF SAID PARCEL MAP, 984.39 FEET TO THE MOST WESTERLY CORNER OF SAID PARCEL 1, AND THE TERMINATION POINT OF THE SOUTHWESTERLY LINE OF SAID 16.5 FOOT EASEMENT.

Attachment: Development Agreement DA2017-0008 Llagas - Strolata (Final) (2029 : Adopt Ordinance 2286- Llagas Strolata)



This map/plot is being furnished as an aid in locating the herein described Land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

EXHIBIT B**DESCRIPTION OF PROJECT**

RDCS2016-0011: LLAGAS – SILVAS: Request for three residential building allotments for Fiscal Year 218-2019. The proposed development contains three single-family homes with remainder lot. The property, identified by Assessor Parcel Number 773-32-013, is located on Llagas Road at Sabini Court (Yancey and Lorinda Silvas, Applicant).

Attachment: Development Agreement DA2017-0008 Llagas - Strolata (Final) (2029 : Adopt Ordinance 2286- Llagas Strolata)

EXHIBIT C

RDCS2016-0011: Request for three residential building allotments for Fiscal Year 2018 – 2019.

SPECIFIC RESTRICTIONS AND REQUIREMENTS

*Contribution estimates may require augmentation for the completion of improvements. Impact fees are subject to the provisions of Section 2.03 (b) of this Agreement.

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
	Public Schools			
B.1	Developer Fees	Commit to payment of district adopted developer fees as provided by the Leroy F. Green School Facilities Act of 1988	Prior to issuance of building permit.	\$ 4,950 per unit
B.4	Off-site pedestrian safety improvements	Provide off-site pedestrian safety improvements or traffic safety improvements to an elementary school located within ¾ miles of the project site or to a middle school or high school up to \$4,950 per unit. Project commits to provide safe walking improvements as designated by MHUSD and the City of Morgan Hill Public Works Department.	Prior to issuance of offsite improvement plans	\$4,950 per unit
	Open Space			
B.4.b	TDC for projects (>25 units)	Property owner or designee commits to double TDC's	Prior to building permit final	Double TDC fee per unit, applicable rate

EXHIBIT C

-1-

Attachment: Development Agreement DA2017-0008 Llagas - Strolata (Final) (2019 : Adopt Ordinance

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
				applies at time of payment
B.4.c				
	Orderly and Contiguous Development			
B.2	Fills in existing utility lines	Property owner or designee agrees to fill in 1 water line, 1 sewer line, 1 stormdrain, and 1 fire. The Project requires gridding/looping of water to increase pressure/redundancy of existing and proposed water extension, by extending water line to tie into the dead-end water stub of Rose Orchard Court or alternate design reviewed and approved by the City Engineer. The required waterline easement shall be obtained prior to approval of the Final/Parcel Map and public improvement plans.	Prior to Site Review Approval	N/A
B.5	Project Master Plan design	There are two swales traversing the property that could potentially affect the design of the parcels and home sites. A geologist has stipulated that there is no defined bed or channel or defined top of bank. The property owner or designee will complete a wetland delineation for the project.	Prior to Site Review Approval	N/A

EXHIBIT C

-2-

Attachment: Development Agreement DA2017-0008 Llagas - Strolata (Final) (2029 : Adopt Ordinance

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
		<p>In Addition, project circulation will require:</p> <ul style="list-style-type: none"> A. An Emergency Vehicle Access (EVA) easement for Fire and Police access for secondary ingress and egress to subdivision and neighboring lots. EVA easement shall loop back to Rose Orchard Court or alternate design reviewed and approved by the City Engineer. The required EVA easement shall be obtained prior to approval of the Final/Parcel Map and public improvement plans. B. Sabini Court shall be improved to a 2/3 rural street standard. The required right of way shall be obtained prior to approval of the Final/Parcel Map and public improvement plans. Sabini Court alignment can be shifted to utilized existing easement to widen Sabini Court to the needed 2/3 standard. 		

EXHIBIT C

-3-

Attachment: Development Agreement DA2017-0008 Llagas - Strolata (Final) (2029 : Adopt Ordinance

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
	Public Facilities			
B.1.	Standard design requirement for public facilities	Project will meet standard requirements for design and construction of public facilities	Prior to Improvement Plan approval	N/A
B.2.b	Drainage concept consistent with City's storm drain system	Project drainage concept will be consistent with City's Storm Drain system, Drainage Master plan, and local area storm drain system	Prior to Improvement Plan approval	N/A
B.2.c	Storm drain lines constructed within paved area of the street	Project will provide public storm drain line to convey water within the public streets from curb to curb	Prior to Improvement Plan approval	N/A
B.2.f	Excess public improvements	The project will provide public facility, off-site storm drainage improvements, or pedestrian improvements from a City-approved list or impairments on or adjacent to project in excess of standard requirements, e.g. sewer, traffic control at \$4,400 per unit.	Prior to Improvement Plan approval	\$4,400 per unit
B.2.g	Contribution to RDCS Capital Improvements fund	The project will contribute \$1,100 per unit to the RDCS Capital Improvements program fund.	Prior to Improvement Plan approval	\$1,100 per unit
	Parks and Paths			

EXHIBIT C

-4-

Attachment: Development Agreement DA2017-0008 Llagas - Strolata (Final) (2029 : Adopt Ordinance

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1	Park in-lieu fee (<50 units)	The property owner or designee shall pay an in-lieu fee consistent with the requirements contained in Chapter 17.28 of the Municipal Code.	Prior to Parcel Map Approval	See Chapter 17.28. for fee calculation
B.3	Bicycle/equestrian/pedestrian paths	Project shall provide a minimum of ¼ miles of Class II bikes lanes and coordinate with the City of Morgan Hill to determine the location.	Prior to issuance of Offsite Improvements	N/A
B.7	Additional park fees (in-lieu fee) for projects (>50 units)	In addition to standard park fees, the property owner or designee shall pay the lesser of either eighteen time the in-lieu park fee or \$6,600 per unit.	Prior to Parcel Map Approval	Eighteen times the in-lieu park fees or \$6,600 per unit. Whichever is less.
	Housing Needs			
B.1	15% Granny units or R-2 projects 10%-25% single family units	The project shall provide one secondary unit for one of the lots.	Prior to Site Review Approval	N/A
B.2.a	Standard Housing Fee	The property owner or designee shall pay the standard housing fee.	Prior to building permit final	\$12,000
B.2.b	Double Housing Fee	The property owner or designee shall pay double the standard housing fee in addition to B.2.a. above.	Prior to building permit final	\$24,000
	Quality of Construction Standards			

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.a	OSB/Plywood wrap	The project will include the installation of OSB/Plywood wrap	Prior to Building permit issuance	N/A
B.1.b	Foundations	The project will utilize alternate materials in the concrete mix such as fly ash, slag, silica fume or rice hull to achieve a 20% reeducation of cement.	Prior to Building permit issuance	N/A
B.1.c	Wallboard	The project will include the installation of light weight wallboard for all walls excluding code requirement for fire walls	Prior to Building permit issuance	N/A
B.1.d	Electrical raceway	The project will include installation of one dedicated ¾ inch electrical raceway for a future circuit to accommodate two 220 Volt electric car charging stations inside the garage.	Prior to Building permit issuance	N/A
B.1.f	90% high efficiency fan forced heating	The project will include the installation of 90% high efficiency fan forced heating	Prior to Building permit issuance	N/A
B.1.g	Zoned heating and air conditioning	The project will include the installation of zoned heating and air conditioning for all one and two-story homes. For multi-family projects with multi-story units, air returns are installed on two floors to improve temperature distribution.	Prior to Building permit issuance	N/A

EXHIBIT C

-6-

Attachment: Development Agreement DA2017-0008 Llagas - Strolata (Final) (2029 : Adopt Ordinance

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.h	Multiple efficiency improvements	The project will include: 1) the installation of listed sound attenuated materials in walls that adjoin a bathroom and/or bedroom walls, 2) installation of high efficiency energy star water heater with energy factor of 0.70, 3) the installation of ultra high efficiency or dual flush toilet, and 4) installation of rain sensor monitor on irrigation system.	Prior to Building permit issuance	N/A
	Safety and Security			
B.1.a	Fire proof safe	Project will include a fire proof safe in every unit.	Prior to building permit final	N/A
B.1.b	First aid kit	Project will include a first aid kit with poison control document in the kitchen of each unit	Prior to building permit final	N/A
B.1.c	Fire protection device	Exterior finishes will comply with Chapter 7A of the California Building Code.	Prior to building permit final	N/A
B.1.d	Outdoor lighting	The project includes the installation of lighted address numbers on each building an illuminated unit numbers on each single-family home. Project also includes the installation of painted reflective curb numbers where possible.	Prior to building permit final	N/A

EXHIBIT C

-7-

Attachment: Development Agreement DA2017-0008 Llagas - Strolata (Final) (2029 : Adopt Ordinance

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.1.f	Illuminated address numbers	The project includes the installation of lighted address numbers on each building and illuminated unit numbers on each single-family home. Project also includes the installation of painted reflective curb numbers where possible.	Prior to building permit final	N/A
B.1.k	Illuminated pathways/walkways	The project includes the installation of illuminated front yard walkways with a minimum of 1-foot candle and motion sensor/controlled lighting in the rear yard of each unit.	Prior to building permit final	N/A
B.2	Crime Prevention through Environmental Design (CPTED)	Project utilizes the design principles of CPTED of natural surveillance, territorial reinforcement for each single-family home.	Prior to building permit final	N/A
B.3	Lockable hardware	Project includes installation of lockable hardware on all side yard and patio gates	Prior to building permit final	N/A
B.4	Central Monitoring	Project includes intrusion, fire alarm, and heat detector systems monitored by a central station. Property owner or designee will include a year monitoring contract with each unit purchased.	Prior to building permit final	N/A
	Livable Communities			

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution
B.7	Maximizes privacy	Building elevations require the windows to be off set for privacy and alternate outdoor patios.	Prior to Site Review approval	N/A



CITY COUNCIL STAFF REPORT

MEETING DATE: October 24, 2018

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: City Manager

ADOPT ORDINANCE APPROVING A DEVELOPMENT AGREEMENT FOR A 389 UNIT APARTMENT PROJECT ON APPROXIMATELY 19.5 ACRES AT JARVIS DR. AND MONTEREY ROAD

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2287, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

On October 17, 2018, the City Council introduced Ordinance No. 2287 New Series, by the following roll call vote: AYES: Carr, Constantine, Spring, Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

The ordinance approves a Development Agreement for 389 rental units on a 19.5 acre parcel. Twenty percent of the units (20%) will be restricted to very-low income households. The initial rents for the remaining units will be affordable to moderate income renters.

COMMUNITY ENGAGEMENT: Not Applicable

This action is mandated by state law and a judgment of the Santa Clara County Superior Court. Future action will be taken to educate the community about changes to state housing law and its implications for maintaining paced growth in Morgan Hill.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 6, 2015, the City Council adopted a resolution changing the General Plan designation for the project site from Industrial to Multi-Family Medium.

On September 2, 2015, the Council held a public hearing on an ordinance amending the zoning designation for the site to be consistent with the General Plan. The ordinance was adopted on October 7, 2015.

On November 10, 2015, the Planning Commission adopted resolution No. 15-66, adopting final scores for the 2015 RDCS competition. The project did not receive a passing score. The City Council adopted resolution No. 15-310 on December 16, 2015 denying an appeal of the project scores. The project did not qualify for allotments.

On January 10, 2017, the Planning Commission adopted resolution No. 17-01 awarding the project 10 residential building allotments. The City Council adopted resolution 17-017 denying appeals by two other projects and reaffirmed the distribution by the Planning Commission.

On May 22, 2018, the Planning Commission adopted resolution No. 18-13, which awarded the project 71 residential allotments, but denied the project's request for multiyear allotments.

On June 20, 2018, the City Council adopted a resolution denying an appeal of the Planning Commission's decision not to award multi-year allotments to the project.

FISCAL AND RESOURCE IMPACT:

As required by the Development Agreement, the developer will remit all impact and development processing fees payable to the City.

CEQA (California Environmental Quality Act):

A program-level Environmental Impact Report for the Butterfield-MWest General Plan Amendment and Addendum was adopted in July 2014.

A project level Initial Study/Consistency Checklist demonstrating consistency with the Butterfield – MWest General Plan Amendment Project GPA 14-04 Environmental Impact Report and Addendum (State Clearinghouse No. 2014072009) and the Morgan Hill 2035 Environmental Impact Report (State Clearinghouse No. 2015022074) was prepared.

LINKS/ATTACHMENTS:

1. Ordinance 2287- MWest

ORDINANCE NO. 2287, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
APPROVING A DEVELOPMENT AGREEMENT FOR A 389
UNIT APARTMENT PROJECT ON APPROXIMATELY 19.5
ACRES AT JARVIS DR. AND MONTEREY ROAD**

THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA DOES ORDAIN AND ENACT AS FOLLOWS:

SECTION 1: California Government Code sections 65864 through 65869.5 authorize the City of Morgan Hill to enter into binding Development Agreements with persons having legal or equitable interests in real property for the development of such property.

SECTION 2: The City Council of the City of Morgan Hill finds that, on the basis of the whole record before it, including the Environmental Impact Report for the Butterfield-MWest General Plan Amendment and Addendum, the Morgan Hill 2035 General Plan Environmental Impact Report, and the project-level Initial Study/Consistency Checklist prepared for the project, that there is no substantial evidence that the project will have a significant effect on the environment, and that the environmental documents described herein represent the City Council's independent judgment and analysis. The custodian of the documents or other material which constitute the record shall be the Community Development Agency.

SECTION 3: ADOPTION OF A DEVELOPMENT AGREEMENT. The City Council hereby approves the Development Agreement attached to this Ordinance as Exhibit A.

SECTION 3. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 4. Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its passage and adoption. The City Clerk is hereby directed to publish in full or summary this ordinance pursuant to §36933 of the Government Code in a newspaper of general circulation in the City of Morgan Hill.

Attachment: Ordinance 2287- MWest (2030 : Adopt Ordinance 2287- MWest)

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 17TH DAY OF OCTOBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 24TH DAY OF OCTOBER 2018 AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

APPROVED:

STEVE TATE, Mayor

ATTEST:

DATE:

IRMA TORREZ, City Clerk

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2287, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 24th day of October 2018.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Ordinance 2287- MWest (2030 : Adopt Ordinance 2287- MWest)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

EXHIBIT A

City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF MORGAN HILL

AND

**MWEST PROPCO XXIII LLC, D/B/A DIVCOWEST SILICON VALLEY
INVESTMENTS**

REGARDING

BUTTERFIELD VILLAGE MULTI-FAMILY RESIDENTIAL PROJECT

Effective Date: _____

Attachment: Ordinance 2287- MWest (2030 : Adopt Ordinance 2287- MWest)

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
MWEST PROPCO XXIII LLC, D/B/A DIVCOWEST SILICON VALLEY INVESTMENTS
REGARDING
BUTTERFIELD VILLAGE MULTI-FAMILY RESIDENTIAL PROJECT

This Development Agreement ("**Agreement**") is entered into on the below-stated "**Effective Date**" by and between the CITY OF MORGAN HILL, a California municipal corporation, (hereinafter "**City**"), and MWEST PROPCO XXIII LLC, D/B/A DIVCOWEST SILICON VALLEY INVESTMENTS a Delaware limited liability company, and its successor and assigns (hereinafter, collectively, "**Developer**"), pursuant to Section 65864 *et seq.* of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq.* ("**Development Agreement Statute**"), which regulates development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishes certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its police powers, City has the authority to enter into development agreements, and has reflected that authority in its MHMC (Chapter 18.116 ¹*et seq.*) ("**Enabling Ordinance**"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Ordinance.

B. Developer is the fee owner of the approximately 19.5-acre property as more particularly described in Exhibit A (the "**Property**").

C. The Developer proposes to plan, develop, construct, operate and maintain a high quality 389-unit multi-family residential apartment project on the Property, and to make twenty percent (20%) of the units affordable and income restricted to Very Low Income Households earning fifty percent (50%) of the Area Median Income ("**VLI Units**"), and as the project is further defined below ("**Project**").

¹ On June 6, 2018, the City adopted a comprehensive zoning code update, which resulted in a renumbering of all code sections in Title 18 of the Municipal Code. All references are to the revised code section numbers.

D. The Project will be the first market rate project in the City to provide 20% VLI Units, and will help the City meet its Regional Housing Needs Allocation requirements pursuant to California Government Code Section 65584 (“**RHNA**”) for VLI Units, an income category in which the City is currently deficient under State Housing Law.

E. The City and Developer have entered that certain unrecorded Settlement Agreement between the City and Developer dated September 17, 2018 (“**Settlement Agreement**”), including a Stipulated Judgment (Case #18CV333676) dated September 17, 2018 (“**Stipulated Judgment**”) related to the City’s violation of Section 65589.5(d) of the California Government Code (the “**Housing Accountability Act**”), whereby MHMC Chapter 18.156 (“**Residential Development Control System**”, or “**RDCS**”) is without legal and/or equitable force and effect as applied to the Project. Pursuant to the Settlement Agreement and Stipulated Judgment, this Agreement serves to: (1) confirm that RDCS has no Legal Effect (as defined below) on the Project; and (2) implement the other terms of the Settlement Agreement and Stipulated Judgment, including securing for the City, in a permanent and enforceable manner, the Developer’s public benefits and voluntary commitments with respect to the Project. These public benefits and voluntary commitments include but are not limited to (and as further and more precisely defined below): (i) providing 20% VLI Units; (ii) the extension of Sutter Road and related utilities from Butterfield Boulevard to Digital Drive to help catalyze industrial development on the adjacent property; (iii) the construction of an approximately 3.2 acre park and a system of trails and pathways that will be publicly accessible, but privately owned and maintained; and (iv) a sidewalk along the Butterfield Boulevard frontage to provide a safe route for pedestrians and school children.

F. And, in light of the commitment to provide 20% VLI Units to help the City meet its RHNA requirements under State Housing Law, this Agreement also confirms, consistent with the Settlement Agreement, the City’s commitments to: (1) expedite and streamline the remaining entitlements to allow for the construction and occupancy of the Project; (2) cooperate and take all actions necessary to assist the Developer to obtain 20-50 Financing (as defined below) for the 20% VLI Units, (3) approve and authorize all actions necessary to remove and terminate that certain temporary overflow stormwater limitation on Lot 26 (“**Stormwater Detention Note**”) as noted on Sheet 2 of that certain Parcel Map recorded in the Official Records of Santa Clara County on September 27, 2000 as Instrument No. 15404436 (“**2000 Parcel Map**”); and (4) to the extent consistent with law, approve and authorize all actions necessary to permit stormwater from the Project to use the City’s detention basin located directly adjacent to Lot 26 as shown on the 2000 Parcel Map.

G. As of the Effective Date of this Agreement, various land use regulations, allotments, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively “**Existing Approvals**”), including without limitation, all of the following:

1. Environmental Impact Report for Butterfield-MWest General Plan Amendment Project and Addendum (GPA-14-04) (SCH #2014072009 (“**GPA EIR**”) and

Environmental Assessment for Butterfield Village Multi-Family Residential Project Development Agreement (File No. 2021: MWest Development Agreement) (“**Development Agreement EA**”)

2. Butterfield-MWest General Plan Amendment (GPA-14-04) (“**GPA**”)
3. 2016 Morgan Hill General Plan (“**General Plan**”)
4. Butterfield-MWest Zoning Amendment (File No. ZA-15-12) (“**Rezoning**”)

On January 18, 2018, the City confirmed by letter (Application No. RDCS2017-0013) that the Project conforms to the General Plan and City’s zoning code (the Project has also been referred to by the City as the “Cochrane-MWest Project.”)

H. For the reasons recited herein, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City’s General Plan and City’s Municipal Code, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

ARTICLE 1

ADMINISTRATION

1.01 Effective Date. On October 17, 2018, following duly noticed and conducted public hearings before the Planning Commission and City Council with respect to the Project, the Morgan Hill City Council (“**City Council**”) introduced Ordinance No. 2287, New Series (“**Ordinance**”) affirming CEQA compliance under the GPA EIR and Rezoning EA, finding that the provisions are consistent with the General Plan, finding the provisions are consistent with the Settlement Agreement and Stipulated Judgment, approving this Agreement, and directing this Agreement’s execution by City. The City adopted the Ordinance on October 24, 2018, and the Ordinance became effective thirty (30) days later. The “**Effective Date**” in this Agreement shall be the date that the Ordinance became effective, and shall be inserted by the City Clerk shall be inserted on the cover sheet prior to recordation.

1.02 Definitions.

(a) The following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

“**20-50 Financing**” shall public financing from any or all of the following sources: (i) private activity tax exempt bond financing (tax-exempt through a volume cap allocation from the California Debt Limit Allocation Committee), (ii) LIHTCs available under Section 42 of the Code and allocated through the TCAC, (iii) any property tax exemption for VLI Units available under the California Revenue and Taxation Code, including Section 214(g) or as otherwise

permitted by the California Board of Equalization, and (iv) any other tax credits and/or other special financing programs that are available to projects that provide at least 20% VLI Units.

“20-50 Financing Requirements” shall mean any and all terms, conditions, obligations, restrictions, requirements necessary for the Developer to apply for, obtain and comply with the 20-50 Financing for the Project.

“2000 Parcel Map” shall have that meaning set forth in Recital F.

“Actual Household Size” means the actual number of persons in the applicable household, as determined by TCAC.

“Administrative Amendment” shall have that meaning set forth in Section 3.05.

“Adjusted for Family Size Appropriate to the Unit” shall be determined consistent with Section 42(g)(2) of the IRC (or successor provision) if applicable.

“Affordable Rent” means the amounts, and fees charged by Developer for occupancy of a VLI Unit by a tenant and required to be paid by such tenant for such VLI Unit on a non-optional basis as determined by Section 42(g)(2)(A) of the Code. For avoidance of doubt, the schedules of Affordable Rent published by TCAC shall be conclusively presumed to be the correct Affordable Rent for the VLI Units.

“Applicable Law” shall have that meaning set forth in Section 2.01(a) of this Agreement.

“Area Median Income” or “AMI” means the median income for Santa Clara County, California, adjusted for Actual Household Size, as determined by HUD pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by TCAC.

“CDLAC” means the California Debt Limit Allocation Committee and any successor agency or authority.

“Central Park” or “Butterfield Park” shall mean that approximately 3.2-acre park as generally consistent with Exhibit B that shall be a privately-owned, privately maintained park subject to public access during standard operating hours and subject to reasonable and uniformly-applied rules and regulations on use and conduct.

“Central Park Construction Costs” shall have that meaning set forth in Section 2.04(c) of this Agreement.

“City Commitments” shall have that meaning set forth in Section 2.04(b) of this Agreement.

“**City’s Authorized Representative**” means the City Manager of the City of Morgan Hill or his or her designee.

“**CSCDA**” means the California Statewide Communities Development Authority.

“**Construction Codes**” shall have that meaning set forth in Section 2.05 of this Agreement.

“**Design Review**” shall mean approval of architectural, site and landscape approval for the Project prior to construction pursuant to Chapter 18.74 of the MHMC.

“**Developer Commitments**” shall have that meaning set forth in Section 2.04(a)(1) of this Agreement.

“**Development Factors**” shall have that meaning set forth in Section 2.06(a) of this Agreement.

“**Director**” shall mean the Director of Community Development, and his or her designee.

“**District**” shall mean any assessment or financing district(s) established by the City pursuant to the Community Facilities District Act of 1982 (Mello-Roos), Government Code Sections 53311 *et seq.*, the Streets and Highways Code, Division 10 and 12, the Landscape and Lighting Act of 1972, or other similar law to finance all or part of the public improvements through the issuance of bonds and the imposition of assessments, fees, or taxes on the benefiting land, including, but not limited to, the Property.

“**Effective Date**” shall be as set forth in Section 1.01 of this Agreement.

“**Existing Approvals**” shall have that meaning set forth in Recital G of the Recitals of this Agreement.

“**Existing City Laws**” shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, green building standards, and other City land use regulations in force and effect on the Effective Date of this Agreement, with the exception of RDCS which is expressly hereby excluded from the definition of Existing City Laws for the purposes of this Agreement.

“**General Plan**” shall have that meaning set forth in Recital G.

“**GPA**” shall have that meaning set forth in Recital G.

“**GPA EIR**” shall have that meaning set forth in Recital G.

“**Gross Income**” shall have the meaning set forth in Section 42 of the IRC, as such section may be revised from time to time.

“**Housing Accountability Act**” shall mean California Government Code have the meaning set forth in Recital E.

“**HUD**” means the U.S. Department of Housing and Urban Development.

“**Impact Fees**” shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to MHMC Chapter 3.56 and California Government Code Section 66001 *et seq.*

“**IRC**” means the Internal Revenue Code of 1986, as amended.

“**IRS**” means the Internal Revenue Service.

“**Legal Effect**” shall mean the ordinance, resolution, permit, license or other grant of approval that has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.

“**LIHTCs**” means low-income housing tax credits.

“**Ministerial Permits**” shall mean grading permits, building permits, fire permits, improvement plans and improvement agreement, certificates of occupancy, and any other “over-the-counter” permits and approvals required under the MHMC for the construction and occupancy of the Project, consistent with this Agreement, including Existing Approvals, Applicable Law, Construction Codes, Design Review and the Subdivision Document.

“**MHMC**” shall mean the Morgan Hill Municipal Code.

“**New City Laws**” shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes Legal Effect after the Effective Date of this Agreement, and that applies City wide.

“**Official Records**” means the Official Records of the Santa Clara County Recorder.

“**Park Impact Fees**” shall mean those development impact fees related to park and recreational facilities pursuant to MHMC Section 3.56.030(A)(5).

“**Project**” means a high quality 389-unit multi-family residential apartment project, including 20% VLI Units as set forth in Section 2.04(b) of this Agreement, and related

infrastructure, circulation, parking, landscaping, park and open space as conceptually described in Exhibit B. Any reference in this Agreement to the "Project" shall mean and include the "Property."

"Project Approvals" mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.

"Property" shall mean that certain real property consisting of approximately 19.5 acres located within the City, as more particularly described and shown on Exhibit A to this Agreement.

"RDCS" means the Residential Development Control System set forth in Chapter 18.78 of the MHMC.

"Required City Entitlements" shall have that set forth in Section 2.04(b)(1) of this Agreement.

"Rent Restricted" means the rent restrictions under Section 42(g)(2)(A) of the IRC.

"Rezoning" shall have that meaning set forth in Recital G.

"Rezoning EA" shall have that meaning set forth in Recital G.

"RHNA" shall have that meaning set forth in Recital D.

"Second Notice" shall have that meaning set forth in Section 4.07(c) of this Agreement.

"Settlement Agreement" shall have that meaning set forth in Recital E.

"Severe Economic Recession" means a decline in the monetary value of all finished goods and services produced in the United States ("US"), as measured by initial quarterly estimates of US Gross Domestic Product ("GDP") published by the US Department of Commerce Bureau of Economic Analysis (and not BEA's subsequent monthly revisions), lasting more than four (4) consecutive quarters. Any quarter of flat or positive GDP growth shall end the period of such Severe Economic Recession.

"Stipulated Judgment" shall have that meaning set forth in Recital E.

"Subdivision Document" means, pursuant to the California Subdivision Map Act and this Agreement, a lot merger or lot line adjustment necessary and appropriate to make the Property suitable for the construction, operation, ownership and financing of the Project.

"Subsequent Approvals" and "Subsequent Approval" mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are

sought by Developer, and that are granted by City after the City Council adopts the Ordinance pursuant to Section 3.01.

“**Substitution of Developer Commitments**” shall have that meaning set forth in Section 2.04(a)(1) of this Agreement.

“**Sutter Road Extension**” shall have the meaning set forth on in Section 2.04(a)(4) of this Agreement.

“**TCAC**” means the California Tax Credit Allocation Committee.

“**TEFRA**” means the Tax Equity and Fiscal Responsibility Act of 1982.

“**Temporary On-Site Stormwater Detention Note**” shall have the meaning set forth in Recital F.

“**Term**” shall have that meaning set forth in Section 1.03 of this Agreement.

“**VLI**” means Very Low Income.

“**VLI Unit**” means a dwelling unit that is Rent Restricted for occupancy at an Affordable Rent by Eligible Households which shall be dispersed throughout the Project, with the exception of the for rent townhome-style units, in compliance with Section 42 of the Code and requirements of the 20-50 Financing, including but not limited to TCAC and CDLAC.

“**Very Low Income Household**” is a household whose household Gross Income is no greater than 50 percent (50%) of AMI adjusted for Actual Household Size, as determined by TCAC.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them elsewhere in this Agreement, or if not in this Agreement, by controlling law, including the MHMC.

1.03 Term.

(a) The term (“**Term**”) of this Agreement shall commence on the Effective Date, and then shall continue (unless this Agreement is otherwise terminated or modified as provided in this Agreement) until the earliest of (1) the issuance of a certificate of occupancy for all units in the Project or (2) ten (10) years plus one day after the Effective Date; provided however that if the Developer constructs the Project, Developer’s obligations pursuant to Sections 2.03 and 2.04 of this Agreement shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with this Agreement, and provided further that the City’s obligations under Section 2.03 and 2.04 shall survive the termination of this Agreement until such obligations are fully performed and completed in accordance with any 20-50 Financing Requirements until such time as the 20-50 Financing is no longer outstanding or subject to recapture.

(b) If any “**Third-Party Challenge**” (as that term is defined in Section 4.06(a) of this Agreement) is filed, then the Term of this Agreement shall be tolled for the period or periods of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or entry of a final judgment (“**Litigation Tolling**”). Notwithstanding the foregoing, regardless of the number of Third-Party Challenges that may be filed during the Term of this Agreement, the sum total of such Litigation Tolling shall not exceed five (5) years. The filing of any Third-Party Challenge shall not delay or stop the development, processing or construction of the Project, or the approval or issuance of any Project Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

ARTICLE 2

APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, “**Applicable Law**” shall mean the rules, regulations, official policies, standards, and specifications applicable to the development of the Property listed below in this Section 2.01. The order of their importance is the order in which they are listed (with highest importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

- (1) All the provisions, terms and conditions of this Agreement.
- (2) Stipulated Judgment
- (3) Settlement Agreement
- (4) Existing Approvals.
- (5) The Subsequent Approvals, provided such Subsequent Approvals are:
 - (i) In compliance with all controlling California law;
 - (ii) Mutually agreed to by the Parties;
 - (iii) In compliance with this Agreement; and
 - (iv) Duly enacted by City.
- (6) The “Existing City Laws” that are not in conflict with this Agreement and the Project Approvals.

- (7) Any "New City Laws" Developer is subject to as provided in Section 2.09 of this Agreement.

(b) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

2.02 Vested Right to Applicable Law.

(a) During the Term of this Agreement, Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, and during the Term of this Agreement, City shall have the right to regulate the development and use of the Project subject only to, and in accordance with, the Applicable Law.

(b) Nothing contained herein will give Developer a vested right to obtain a sewer connection for said Project in the absence of sewer capacity available to the Project.

(c) Pursuant to this Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City, and/or when Developer becomes subject to a New City Law, but only to the extent and as provided in this Agreement.

(d) Developer agrees that the terms and conditions of this Agreement and conditions of approval issued pursuant to this Agreement shall govern and dictate the vesting of the Developer's right to develop in lieu of any other instrument of vesting, including any vesting tentative map or any other agreement, instrument or document purporting to vest any right of development. Developer agrees to waive any vesting rights by operation of any otherwise applicable City, state or federal law.

2.03 Project Impacts and Costs.

(a) Agreement Subject to Project Mitigation Requirements. Notwithstanding any other express or implied term or condition of this Agreement (or the Existing Approvals) to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental (including any mitigation measure adopted pursuant to CEQA), physical, fiscal and other impacts of the Project and the Property on the community and on the City of Morgan Hill and its services, facilities, operations and maintenance (collectively, "**Project Mitigation**") shall be borne by and shall be the sole and exclusive responsibility of the Developer. Such Project Mitigation may be conditions of any Applicable Law or Project Approval and may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of Impact Fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation, reimbursement agreements, Landscaping and Lighting Districts, Mello-Roos Districts,

Community Facilities Districts, Assessment Districts, Maintenance Districts, Homeowners Associations, and participation in the Statewide Communities Infrastructure Program (collectively, "**Financing Mechanisms**"). The necessary scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by Developer, in its reasonable discretion, pursuant and subject to this Agreement and all appropriate and applicable City ordinance, resolution, regulations or procedures, taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(b) Impact Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04 and as part of the Developer's sole and exclusive obligation to cover Project Mitigation, Developer shall pay all Impact Fees, but only to the extent such Impact Fees exist and in the amounts in Legal Effect as of the Effective Date, and shall pay such Impact Fees when they become due and payable as provided for in the City's Municipal Code, and to the extent possible Impact Fees will be designated to such capital expenditure related to Project infrastructure.

(c) Processing Fees. In addition to any agreed-upon Project-specific requirements as set forth in Section 2.04, the Project (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks, and environmental studies required pursuant to CEQA and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall impose those funding requirements needed to ensure that the processing costs to the City are fully covered by the Developer. Further, if additional, accelerated, or more frequent inspections are requested by Developer or City than would otherwise take place in City's ordinary course of business, then City may either hire additional contract inspectors, plan checkers, engineers or planners, or City may hire a full or part time employee. If City hires additional contractors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

(d) Approval of the Financing Mechanisms. The City and the Developer agree that the construction of public improvements (including but not limited to the Sutter Road Extension and other infrastructure, open space and circulation to serve the Project) may be financed by a District or Districts which could encompass the Property, and, to the extent other property owners outside the Property are interested or benefit and are made part of such District in accordance with all applicable law, such other lands. If the Developer requests formation of a District, the Developer will be deemed to have consented to formation of such District(s), to the

assessments or taxes ratably allocated to the Property by the District(s), and to having the Property included within the District(s). The Developer agrees to cooperate in the City's formation of the District or Districts and in the performance by the District(s) of its responsibilities. The City and Developer agree that, unless the City and the Developer agree otherwise, the assessments or special taxes for any District formed will be collected from any parcels only after the issuance of building permits for such parcels. City, as the legislative body of any District, shall proceed with all good faith to consider at a noticed public meeting of the legislative body, the adoption of a resolution of intention and a rate and method of apportionment or an engineer's report, establishing a special tax or assessment to be levied semi-annually on property within the District(s), subject to the provisions of subsections (a) and (b) below. City, as legislative body of the District(s), shall thereafter, in accordance with the appropriate legislation for the Financing Mechanism, consider a resolution of formation for the adoption of such District(s) and shall further hold all elections of the qualified voters thereof in connection with the establishment of a District(s) and the approval of such special tax or assessment. City, as legislative body of the District, further agrees to simultaneously consider (or at such time as California law shall otherwise require) the adoption of a resolution of issuance of bonds secured by such special tax or assessment in an amount as is necessary to finance the Improvements and the Impact Fees that may be required in connection with the development of the Project; provided, however, that the amount of such bonds shall be dictated by prudent underwriting standards, as may be required by an underwriter selected by the City. In all respects, City agrees to use its good faith efforts to implement such requests, and Owner shall rely on such good faith efforts in connection with the consideration provided hereunder by Owner. City shall also use its good faith efforts to enter into joint facilities financing agreements with other eligible recipients of District proceeds. For the purposes of clarity, the term "Financing Mechanism" as used in this Section 2.03(d) shall not include the 20-50 Financing which is considered separate and essential to support the VLI Units and is not subject to City approval and is instead subject to Section 2.04(b)(2) of this Agreement.

(A) General Parameters for Approval of Financing Mechanisms.

1. Upon written request of City, Developer will advance amounts necessary to pay all costs and expenses of City to evaluate and structure any Financing Mechanism, to the end that City will not be obligated to pay any costs related to the formation or implementation of any Financing Mechanism. City staff shall meet with the Developer to establish a preliminary budget for such costs, and will confer with Developer from time to time as to any necessary modifications to that budget.

2. Any Financing Mechanism may provide for the reimbursement to Developer of any advances by Developer for any costs incurred in Section (a)1 above, and any other costs incurred by Developer that are related to the Financing Mechanism, such as the costs of legal counsel, special tax consultants, engineers, etc. Developer agrees to promptly submit to City a detailed accounting of all such other costs incurred by Developer at such time as Developer makes application for

reimbursement. Prior to the filing by Developer of a petition to request that the City institute proceedings to create a District, City and Developer shall enter into a deposit and reimbursement agreement, mutually acceptable to both City and Developer that provides for the deposit by Developer of funds sufficient to commence proceedings to form any Financing Mechanism and the reimbursement of such amounts from the available bond or assessment proceeds.

(B) Financing Parameters for Approval of Financing Mechanisms.

1. Any Financing Mechanism shall be secured solely by assessments or special taxes levied within the respective District, proceeds of the bonds issued that are placed in a bond fund, reserve fund or other such fund for the financing and investment earnings thereon. City's general fund shall not be pledged to the repayment of any public financing contemplated by this Section. Notwithstanding anything to the contrary in this Agreement, nothing herein would preclude the City from pursuing other financing alternatives as is necessary to finance infrastructure, public facilities, including but not limited to the Improvements and/or Impact Fees, if it would be in the best interest of the City.

2. The payment of reasonable initial and annual administrative costs of the City to be incurred in connection with any Financing Mechanism shall be adequately assured, through the inclusion in any assessment or special tax methodology and the City's general fund shall not be called upon to provide for initial or any annual administrative costs related to the Financing Mechanism.

2.04 Developer and City Commitments and Obligations.

(a) Developer Commitments and Obligations

(1) Developer Commitments. The Developer's public benefit commitments for the Project set forth in Exhibit C ("**Developer Commitments**") are voluntarily proposed and agreed to by Developer in return for benefits derived from this Agreement, including but not limited to the City Commitments in Section 2.04(b). These requirements are not Project Mitigation within the meaning of Section 2.03 of this Agreement. Developer hereby agrees that these requirements are not subject to credit, refund or reimbursement or prohibition pursuant to otherwise applicable City, state or federal law and hereby waives any such right to credit, refund, reimbursement or prohibition, except as expressly provided in this Agreement. The Developer Commitments set forth in Exhibit C shall be enforceable by the City through this Agreement. In the event of any conflict between Exhibit C and the text of this Agreement, the text of this Agreement shall control. In the event of any conflict between Exhibit B and Exhibit C, Exhibit C shall control. Substitution of Developer Commitments or adjustments in implementation timing may be approved by the Director of Community Development if such substitution or

implementation timing adjustment would not degrade the quality of the Project, materially lower the value of the Developer Commitments, or would subject the Project to further environmental review under CEQA (“**Substitution of Developer Commitments**”). Any approved Substitution of Developer Commitments shall be documented through an Administrative Amendment as provided in Section 3.05 of this Agreement.

(2) Affordable Housing. Twenty percent (20%) of the residential units in the Project shall be Rent Restricted at the Affordable Rent for Very Low Income Units and occupied (or if vacant, available for occupancy) by Very Low Income Households. The Developer shall submit a plan for the location of the VLI Units with the application for Design Review. Developer reserves the right to determine the specific location of the VLI Units provided the location is allowed under the 20-50 Financing. Subject and subordinate to any conflicting 20-50 Financing Requirements (including any required regulatory agreement), the Developer shall enter into a recorded covenant to ensure the VLI Units remain Rent Restricted for at a minimum of fifty-five (55) years prior to the first certificate of occupancy for the Project. The parties acknowledge and agree that the Project and this Section 2.04(a)(2) shall be subject to modification and subordination, if, and to the extent necessary, to meet 20-50 Financing Requirements for the Project, and the City and Developer shall document any such modification through an Administrative Amendment as provided in Section 3.05 of this Agreement.

(3) Central Park. As a multi-family apartment development, the Project is not subject to MHMC Section 17.28. The City confirms it has no desire or intention to take fee title, or to accept operational or maintenance obligations to the Central Park or any other park or open space proposed as part of the Project. The Central Park be designed and constructed generally consistent with the location and amenities (subject to reasonable modification and substitution) shown conceptually Exhibit B, and shall not be (unless voluntarily proposed by Developer) required to meet the City “Public Park Standards.” The City also confirms that the Central Park, as proposed as a private park subject to public access, is consistent with the General Plan and applicable zoning, and the only City approvals necessary for the construction and operation of the Central Park are (i) Design Review and Ministerial Permits. As described in more detail on Exhibit B and Exhibit C, the Developer has voluntarily committed to design, construct and operate the Central Park with the Project and to complete the Central Park prior to the final certificate of occupancy for the Project. Developer shall submit a good faith cost estimate for all design and construction costs associated with the Central Park (including engineering and design costs, land preparation, improvements, equipment, fixtures and finishes, and City fees) (“**Central Park Construction Cost**”) to the City prior to issuance of the first building permit for any residential units in the Project, for review and approval by the City Engineer, in his or her reasonable discretion which shall not be unreasonably withheld or delayed (“**City Engineer Approval**”). If the Central Park Construction Cost is estimated to exceed the amount of Park Impact Fees due from the Project, the Developer shall not pay Park Impact Fees. If the costs are estimated to be less than the Park Impact Fees, the Developer shall pay, when due, only the difference. At the completion of the Central Park (final inspection), the Developer shall submit a reasonable accounting of the actual Central Park Construction Cost for City Engineer Approval, and if the Central Park Construction Cost exceeds the Park Impact Fees for the Project, the Developer shall

not owe any Park Impact Fees for the Project. If the final Central Park Construction Cost is less than the Park Impact Fees for the Project, the Developer shall pay the difference (minus any amount paid previously). If the Developer paid any Park Impact Fees and the actual Central Park Construction Costs exceed the Park Impact Fees, the City shall promptly reimburse the excess to Developer. This Section does not obligate the City to reimburse the Developer for any amount the Central Park Construction Costs exceed the Park Impact Fees.

(4) Sutter Road Extension. In order to help attract users and accelerate new investment on the adjacent industrial property, at the time set forth below, the Developer shall dedicate, design and construct a slightly re-aligned 68-foot public street right-of-way from the intersection of Butterfield Boulevard and Sutter Boulevard to the extension of Sutter Place off of Digital Drive, as conceptually shown on Exhibit B ("**Sutter Road Extension**"), with an approximate full length of 1,490 lineal feet. The proposed realignment is intended to increase the marketability of the industrial lots and allow for development of the Central Park. Developer shall submit revisions to the approved November 30, 2001 "Plans for the Improvement of Sutter Place" to reflect the realignment and current standards per the attached Industrial standard 48-feet (curb-to-curb). Improvements for the Sutter Road Extension shall include, but not be limited to, curb and gutter, compaction, sidewalks, driveway entrances, street paving, joint trench, storm drainage facilities, sewer and water mainlines and laterals, fire hydrants and street lighting. Driveway entrances and sidewalks may be deferred for construction on an individual parcel basis concurrent with the construction of each building site subject to reasonable approval of the City Engineer. Developer and City acknowledge that, as shown on Exhibit B, all but approximately 670 lineal feet of the Sutter Road Extension is anticipated to be required to provide adequate circulation and a secondary access and connection for the Project to Butterfield Boulevard. However, in order to expedite development and make the adjacent industrial property "business ready," Developer commits to and shall commence construction (and complete in 270 days) of the entire length of the Sutter Road Extension from Butterfield Boulevard to Digital Drive once Developer receives building permits for 165 residential units in the Project.

(b) City Commitments

(1) Required Entitlements and Expedited Processing. The City hereby confirms that the only entitlements required for construction and occupancy of the Project are: (1) CEQA compliance, (2) Design Review, (3) a Subdivision Document, and (4) Ministerial Permits ("**Required City Entitlements**"). Pursuant to Section 3.01, the City shall use reasonable and good faith efforts to expedite the Required City Entitlements to allow for the construction and occupancy of the Project.

(2) 20-50 Financing Assistance. In addition to any Financing Mechanisms under Section 2.03(d), the City shall cooperate and take all actions necessary (and when necessary) to assist the Developer to obtain 20-50 Financing and to meet any 20-50 Financing Requirements, including, but not limited to: (i) acting as the local reviewing agency in support of the applications for any bond financing, (ii) approval to use CSCDA, or other joint powers authority selected by the Developer, as the bond issuer and cooperation with their bond counsel

(iii) holding a TEFRA hearing as required by the IRS, and (iv) cooperation with any reasonable requirements of Developer and its lenders with respect to bond financing and the investors with respect to LIHTCs, including refinancing or refunding any previously obtained bond financing, and (v) providing reasonable assistance to the Developer in obtaining a property tax exemption for VLI Units available under the California Revenue and Taxation Code, including Section 214(g) or as otherwise permitted by the California Board of Equalization. The City acknowledges that timing is of the essence to obtain 20-50 Financing.

(3) Termination of City's Use of Property for Temporary Overflow Stormwater Detention Purposes. To allow for development of the Project, the City hereby approves the removal and termination of the Temporary On-Site Detention Note on the 2000 Parcel Map restricting use of Lot 26 for temporary overflow stormwater detention purposes, and hereby authorizes the City Engineer and City Attorney to take all actions necessary to remove the notation for title purposes within sixty (60) days of the Effective Date; and

(4) City Detention Basin. The Developer shall have the right to, consistent with all Applicable Law and Construction Codes, direct stormwater from the Project to the City's detention basin located directly adjacent to Lot 26 as shown on the 2000 Parcel Map for stormwater water quality treatment and detention (storage) purposes.

2.05 Construction Codes.

With respect to the development of any or all of the Project or the Property, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "**Construction Codes**") in place at that time that a plan check application for a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.06 Timing of Development.

(a) The parties acknowledge that Developer cannot at this time predict when or the rate at which the Project will be developed. Such decisions depend upon numerous factors which are not within the control of Developer, such as the duration of city processing and permitting, the availability of 20-50 Financing, market orientation and demand, interest rates, absorption, completion and other similar factors (the "**Development Factors**"). Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that the Developer shall have the right to develop its Property in such order and at such rate and at such times as the Developer deems appropriate within the exercise of its subjective business judgment. In the event that a New City Law is enacted, whether by action of the City Council or by initiative or otherwise, which governs the rate, timing, phasing or sequencing of new development or construction in the City,

such New City Law shall not apply to the Project or any portion thereof. The Parties acknowledge a mutual desire to have the Project develop as quickly as the Development Factors permit.

(b) Securing Building Permits and Beginning Construction. Developer is required to obtain the Required City Entitlements. However, any Subsequent Approval initiated by Developer which substantially changes the permitted uses or substantially increases the height and density or floor area allowed under the Project Approvals, shall be subject to the rules, regulations, ordinances and official policies of the City then in effect.

(c) Certificate of Completion. Within thirty (30) days after completion to the City's satisfaction of 100% of the total number of units in the Project, the City shall provide Developers with an instrument in recordable form certifying completion of the entire Project.

2.07 Intentionally Deleted.

2.08 Overcapacity, Oversizing.

(a) To the extent consistent with this Agreement, City may require Developer to construct on-site and off-site improvements in a manner that provides for oversizing or overcapacity so that the constructed improvement will serve other development or residents or facilities and services outside of the Project ("**Oversizing**"). Such Oversizing shall be reasonable in scope. The Parties recognize that the City shall not require any Oversizing from Developer except in connection with the Project Approvals and in accordance with provisions of the Subdivision Map Act and Applicable Law.

(b) Developer's right to receive credits and reimbursements for Oversizing or excessive payment or performance shall be determined and processed pursuant to the City's Municipal Code and controlling practices (relative to credits and reimbursements) on the Effective Date.

2.09 New City Laws.

(a) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes, nor otherwise reduces the development rights or assurances provided by this Agreement, including but not limited to the 20-50 Financing. City shall not apply any New City Law that would adversely affect the financial feasibility of the Project that is subject to 20-50 Financing. City shall not apply to the Project nor Property any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development, including but not limited to, RDCS as in effect as of the Effective Date or as may be later amended from time to time.

(b) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) Change any land use designation or permitted use of the Property allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals.

(5) Conflict with any aspect of the 20-50 Financing or 20-50 Financing Requirements.

(6) Institute or apply rent or income restrictions other than the Rent Restrictions as to the Project, as such Rent Restrictions may be increased from time to time as provided by TCAC or under the standards of HUD; and

(7) Determine rents with respect to the VLI Units in a fashion that is inconsistent with Section 42 of the IRC or the rules or regulations of TCAC.

(c) If City determines that it has the right pursuant to this Agreement to impose and apply a New City Law on the Property and Project, it shall send written notice to Developer of that City determination ("**Notice of New City Law**"). Upon receipt of the Notice of New City Law, if Developer believes that such New City Law is in conflict with this Agreement, Developer may send written notice to the City of the alleged conflict within thirty (30) days of receipt of City's Notice of New Law ("**Objection to New City Law**"). Developer's Objection to New City Law shall set forth the factual and legal reasons why Developer believes City cannot apply the New City Law to the Property/Project. City shall respond to Developer's Objection to New City Law ("**City Response**") within thirty (30) days of receipt of said Developer Objection to New City Law. The City Response shall set forth the factual and legal reasons why City believes it can apply

the New City Law to the Project. Thereafter, the Parties shall meet and confer within thirty (30) days of the date of Developer's receipt of the City Response (the "**Meet and Confer Period**") with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. Within fifteen (15) days of the conclusion of the Meet and Confer Period, City shall make its determination, and shall send written notice to Developer of that City determination. If City determines to "impose/apply" the New City Law to the Project, then Developer shall have a period of ninety (90) days from the date of receipt of such City determination within which to file legal action challenging such City action. In other words, a 90-day statute of limitations regarding Developer's right to judicial review of the New City Law shall commence upon Developer's receipt of City's determination following the conclusion of the Meet and Confer Period. If upon conclusion of judicial review of the New City Law (at the highest judicial level sought and granted), the reviewing court determines that Developer is not subject to the New City Law, such New City Law shall cease to be a part of the Applicable Law, and City shall return Developer to the position Developer was in prior to City's application of such New City Law (*e.g.*, City return fees, return dedications, etc.). The above-described procedure shall not be construed to interfere with City's right to adopt or apply the New City Law with regards to all other areas of City (excluding the Project).

(d) Developer in its sole and absolute discretion may elect to have applied to the Project a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (d). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve Developer from, or impede Developer's compliance with, Developer's obligations pursuant to this Agreement, including without limitation Developer's obligations pursuant to Section 2.03 and 2.04. Further, for the purposes of this Agreement, the "New City Laws" Developer may elect to be subject to pursuant to this Section shall not mean nor include any or all individual development agreements with other developers (including without limitation such development agreements' term and conditions, exhibits, etc.) executed before or after the Effective Date of this Agreement.

(e) City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by State or Federal laws or regulations, and implemented through the Federal, State, regional and/or local level ("**Mandated New City Laws**"), including without limitation those provisions in the Development Agreement Statute, or that such New City Laws are necessitated by or arise from a declaration of City, local, state or federal declaration of a state of emergency.

(f) In the event that an administrative challenge and/or legal challenge (as appropriate) to a Mandated New City Laws preventing compliance with this Agreement is brought and is successful in having the Mandated New City Law determined to not apply to this Agreement, this Agreement shall remain unmodified and in full force and effect.

ARTICLE 3

PROCESSING

3.01 Processing.

(a) This Agreement does not provide Developer with any right to the approval of Subsequent Approvals nor to develop or construct the Project beyond that which is consistent with or authorized by this Agreement, including all Applicable Law and Construction Codes. This Agreement provides a process by which such Subsequent Approvals may be processed by Developer, and later added to this Agreement, if and only if such Subsequent Approvals are compliant with all controlling California law (including Planning and Zoning Law and CEQA), and are adopted/approved by City, which shall retain all lawful discretion in this regard, to the extent consistent with this Agreement, including all Applicable Law and Construction Codes. Nothing in this Agreement shall be construed to limit the authority or obligation of City to hold necessary public hearings, or to limit the discretion of City or any of its officers or officials with regards to the Project Approvals that legally require the exercise of discretion by City, to the extent consistent with this Agreement, including all Applicable Law and Construction Codes. City's discretion as to the granting of Subsequent Approvals shall be the discretion afforded by this Agreement, including all Applicable Law and Construction Codes. Therefore, so long as the Developer is in good faith compliance with this Agreement, and in the spirit of the mutual benefit of delivering the VLI Units, the City shall prioritize processing of applications related to the Project (including but not limited to public and private improvement plan review and scheduling inspections) and shall proceed in a reasonable and expeditious manner, in compliance with the deadlines mandated by applicable agreements, statutes or ordinances, to complete all steps necessary for implementation of this Agreement and development of the Project, including the following actions:

(i) Required City Entitlements; Design Review. Developer shall apply for and obtain all Required City Entitlements prior to construction and occupancy, as applicable. So long as the proposed Project, or portion thereof subject to a formal application, meets the Existing Approvals, Applicable Law, Construction Codes and is in conformance with CEQA, City shall expedite review and approval of all Required City Entitlements. The Design Review process for the Project shall be in accordance with the administrative portion only of Chapter 18.108.040 of the Morgan Hill Municipal Code, subject to normal appeal rights of the Developer under Chapter 18.108.

(ii) General Processing; Third Party Consultants. Developer, in a timely manner, shall provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder and to cause City's planners, engineers and all other consultants to submit in a timely manner all necessary materials and documents. It is the Parties' express intent to cooperate with one another and diligently work to implement all land use and building approvals for development of the Property in accordance this Agreement. At Developer's request and sole expense, City shall retain outside building consultants to review plans or otherwise assist City's efforts in order to expedite City processing and approval work. City shall cooperate

with Developer, and assist Developer in obtaining any third-party governmental or private party permits, approvals, consents, rights of entry, or encroachment permits needed for development of the Project or any other on or offsite improvements. The City acknowledges that time is of the essence with respect to these actions, particularly as they relate to obtaining and complying with the 20-50 Financing.

(iii) CEQA. City has prepared and certified the GPA EIR, Addendum and Development Agreement EA and has imposed mitigation measures as conditions of approval prior to the execution of this Agreement. This Agreement does not limit City's duty to comply with the provisions of CEQA and the associated Guidelines, as they may be amended from time to time, that comply with the provisions of § 21082 of CEQA. However, City shall not undertake additional environmental review under CEQA unless required to do so by CEQA. In the event that any such further environmental review is required for a subsequent approval or other discretionary action, it shall be in accordance with §§ 15162-15164 of the CEQA Guidelines, and the scope of analysis and evaluation shall be as required by CEQA.

(iv) Standard of Review. All Required City Entitlements shall be issued by City after City's review and approval of Developer's applications, provided that City's review of the applications is limited to determining whether the following conditions are met:

(A) Submission by Developer of any and all necessary and required applications for Subsequent Approvals and payment of any and all appropriate processing and other fees as provided in this Agreement; and

(B) The application is complete and all fees due related to such application are paid; and

(C) The application demonstrates that Developer has complied with this Agreement, the Existing Approvals, Applicable Law (including CEQA), and Construction Codes.

3.02 Significant Actions by Third Parties Necessary to Implement the Existing Approvals.

(a) At Developer's sole discretion, Developer shall apply for such other permits, grants of authority, agreements, and other approvals from other private and/or public and quasi-public agencies, organizations, associations or other entities ("**Other Entity**") as may be necessary to the development of, or the provision of services and facilities to, the Project ("**Other Permits**").

(b) City shall cooperate with Developer in its endeavors to obtain any Other Permits and shall, from time to time, at the request of Developer, join with Developer in the execution of such permit applications and agreements as may be required to be entered into with any such other agency.

(c) In the event that any such Other Permit is not obtained from an Other Entity within the time permitted by law for such other entity to act and such circumstance materially

deprives Developer of the ability to proceed with development of the Project or any portion thereof, or materially deprives City of a bargained-for public benefit of this Agreement, then, in such case, and at the election of either party, Developer and City shall meet and confer with the objective of attempting to mutually agree on solutions that may include alternatives, Subsequent Approvals, or an amendment(s) to this Agreement to allow the development of the Project to proceed with each Party substantially realizing its bargained-for benefit therefrom.

3.03 Intentionally Deleted.

3.04 Amendments.

This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868. Any request by Developer for an amendment or modification to this Agreement or a Project Approval shall be subject to the applicable substantive and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations (i.e., City review and approval) in effect when such an amendment or modification request is approved. Upon the written request of Developer for an amendment or modification of this Agreement or a Project Approval, the City Manager or his designee shall determine: (1) whether the requested amendment or modification qualifies as an Administrative Amendment subject to Section 3.05; and (2) whether the requested amendment or modification is consistent with this Agreement and the Applicable Law.

3.05 Administrative Amendment

(a) If the City Manager or his designee finds that the proposed amendment or modification is both minor and consistent with this Agreement and the Applicable Law ("**Administrative Amendment**"), the City Manager or his designee may approve the proposed Administrative Amendment without notice and public hearing. Any Administrative Amendment must be made in writing signed by the City Manager (and approved by the City Attorney in his or her reasonable discretion) of the City and by the Developer. After approval and signatures from the City Manager and the Developer, the Administrative Amendment shall be recorded with the Santa Clara county recorder.

(b) An Administrative Amendment shall not include any of the following:

(i) Any material amendment or modification, or elimination of provisions required pursuant to the Morgan Hill Municipal Code and California Government Code Section 65865.2, or its successor legislation, including provisions relating to: (1) the duration or term of this Agreement, (2) the Permitted Uses of the subject property, (3) the density or intensity of uses, (4) the maximum height and size of proposed buildings allowed under the Existing Approvals, (5) provisions for reservation or dedication of land for public purposes, or (6) material changes in the Project allowed under the Existing Approvals (which does not include minor adjustments to the site plan, orientation and location of buildings, floor plans, architecture, landscaping, circulation, etc.); or

(ii) Any material amendment or modification or eliminations of the Developer Commitments set forth in Article 2.04(a) of this Agreement, any reduction in fees, or any reduction or elimination of any Project Mitigations hereunder, except that, upon the written request of, and payment of the established fee by, Developer, a Substitution of Commitments.

ARTICLE 4

DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

(a) Any failure by City or Developer to perform any material term or provision of this Agreement, which failure continues uncured for a period of sixty (60) days (or 150 days for a Mortgagee (as that term is defined in Section 4.10(a)) following written notice of such failure from the other Party (unless such period is extended by written mutual consent) ("**Notice of Default**"), shall constitute a default pursuant to this Agreement ("**Default**"). A Default by the City under this Agreement shall be a default under the Settlement Agreement. Any Notice of Default shall specify the nature of the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 60-day period (or 150 days for a Mortgagee), then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 60-day period (or 150 days for a Mortgagee). If the alleged failure is cured, then no Default shall exist and the noticing Party shall take no further action. If the alleged failure is not cured, then a Default shall exist pursuant to this Agreement and the non-defaulting Party may exercise any of the remedies available pursuant to this Article.

(b) No failure or delay in giving notice of default shall constitute a waiver of default; provided, however, that the provision of written notice and opportunity to cure shall nevertheless be a prerequisite to the enforcement or correction of any default. Waiver of a breach or default pursuant to this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

4.02 Actions During Cure Period.

(a) During any cure period and during any period prior to any delivery of notice of failure or default, the Party charged shall not be considered in default for purposes of this Agreement. If there is a dispute regarding the existence of a default, the Parties shall otherwise continue to perform their obligations hereunder to the maximum extent practicable in light of the disputed matter and pending its resolution, or formal termination of the Agreement, as provided herein.

(b) City will continue to process in good faith development applications during any cure period, but need not approve any such application if it relates to an alleged default of Developer hereunder.

4.03 Resolution of Disputes.

(a) In the event either Party is in default pursuant to the terms of this Agreement, the other Party may elect, in its sole and absolute discretion, to pursue any of the following courses of action: (i) waive such default; (ii) pursue administrative remedies as provided herein; (iii) pursue judicial remedies as provided for herein; and/or (iv) terminate this Agreement.

(b) Except as otherwise specifically stated in this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default by another Party to this Agreement, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation hereunder, or to seek specific performance. It is expressly understood and agreed that the sole legal remedy available to a party for a breach or violation of this Agreement by the other party shall be a legal action in mandamus, specific performance, and/or other injunctive or declaratory relief to enforce the provisions of this Agreement, and that neither party shall be entitled to bring an action for damages including, but not limited to, lost profits, consequential damages or other economic damages. For purposes of instituting a legal action pursuant to this Agreement, any City Council determination pursuant to this Agreement shall be deemed a final agency action.

(c) If any dispute arises between or among the Parties as to interpretation or application of any of the terms of this Agreement, the Parties shall attempt to resolve the dispute in accordance with this Agreement prior to third party mediation, arbitration, or formal court action. As to any such dispute, the Parties shall first meet and confer in good faith to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party or Parties all information relevant to the dispute, to the end that all Parties will have appropriate and adequate information to resolve the dispute. Should the Parties not resolve the dispute informally, the Parties agree to meet and confer in an effort to agree on utilizing Judicial Arbitration Mediation Services ("JAMS") for Alternative Dispute Resolution ("ADR"). However, no party shall be required to use JAMS or ADR.

4.04 Annual Review.

(a) Annual Review. City and Developer shall review all actions taken pursuant to the terms of this Agreement annually during each year of the Term, within thirty (30) days prior to each anniversary of the Effective Date. Except as affected by the terms hereof, the terms of MHMC Section 18.116.060 shall govern City's compliance review process. During any review, Developer shall bear the burden of proof to demonstrate good faith compliance with the terms of this Agreement.

(b) Developer's Submittal. Within ninety (90) days before each anniversary of the Effective Date, Developer shall submit a compliance letter ("**Compliance Letter**") to the City Manager with copies to the Community Development Director and the City Attorney, describing Developer's compliance with the terms of the Conditions of Approval and this Agreement during the preceding year. The Compliance Letter shall include a statement that the

Compliance Letter is submitted to City pursuant to the requirements of Government Code Section 65865.1, this Agreement, and Morgan Hill Municipal Code Section 18.116.060.

(c) City's Finding of Compliance. Within sixty (60) days after receipt of the Compliance Letter, the City Manager shall determine whether, for the year under review, Developer has demonstrated good faith substantial compliance with the terms of this Agreement. If the City Manager finds and determines that Developer has complied substantially with the terms of this Agreement, or does not determine otherwise within sixty (60) days after delivery of the Compliance Letter, the annual review shall be deemed concluded, Developer shall be deemed to have complied in good faith with the terms and conditions of this Agreement during the year under review, and this Agreement shall remain in full force and effect. Upon a determination of compliance, the City Manager shall, if requested by Developer, issue a recordable certificate confirming Developer's compliance through the year under review ("**Compliance Certificate**"). Developer may record the Compliance Certificate with the Santa Clara County Recorder's Office.

(d) City's Finding of Non-Compliance. If the City Manager finds the Developer has not complied in good faith with the terms and conditions of this Agreement during the year under review, the City Manager shall specify in writing to the Developer the respects in which the Developer has failed to comply, and shall set forth terms of compliance and specify a reasonable time for the applicant to meet the terms of compliance. Within ten (10) days of receipt of the notice of noncompliance the Developer may, at its option and in its sole discretion, file a written appeal to the City Council. If the Developer files an appeal, the City Council shall, expeditiously, hold a duly noticed public hearing on the matter. If, after such hearing, the Council finds and determines based on substantial evidence that Developer has complied in good faith, then the City Manager shall issue a Compliance Certificate pursuant to Section 8.03. If, however, the City Council determines based on substantial evidence that Developer has not complied in good faith, the City Manager shall give written notice thereof to Developer terms of compliance and specify a reasonable time for the applicant to meet the terms of compliance, and such notice shall serve as a Notice of Default under Section 4.04. If after receipt of a notice of non-compliance, Developer fails to cure the noncompliance within a reasonable period of time as established by the City Manager, in his or her discretion, may (a) grant additional time for compliance by Developer, or (b) refer the Agreement to the City Council to modify this Agreement to the extent necessary to remedy or mitigate the noncompliance or terminate this Agreement.

4.05 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, Severe Economic Recession, or litigation (including without limitation litigation contesting the validity, or seeking the

enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "**Force Majeure Event**").

(b) Any Party claiming a delay as a result of a Force Majeure Event shall provide the other Party with written notice of such delay and an estimated length of delay. Upon the other Party's receipt of such notice, an extension of time shall be granted in writing for the period of the Force Majeure Event, or longer as may be mutually agreed upon by the Parties, unless the other Party objects in writing within ten (10) days after receiving the notice. In the event of such objection, the Parties shall meet and confer within thirty (30) days after the date of objection to arrive at a mutually acceptable solution to the disagreement regarding the delay. If no mutually acceptable solution is reached, any Party may take action as permitted in this Agreement.

4.06 Third Party Legal Actions.

(a) In the event of any administrative, legal or equitable action or other proceeding instituted by any person, entity or organization (that is not a Party to this Agreement) challenging the validity of this Agreement, any Project Approvals, or the sufficiency of any environmental review pursuant to CEQA ("**Third-Party Challenge**"), the Parties shall cooperate with each other in good faith in the defense of any such challenge.

(b) City shall tender the complete defense of such Third-Party Challenge to the Developer ("**Tender**"). If City chooses to defend the Third-Party Challenge, City shall control all aspects of the defense and City shall pay City's own attorneys' fees and costs (including related court costs) and shall pay any and all third-party fees and costs arising out of such Third-Party Challenge.

(c) Developer shall accept City's Tender, and Developer shall control all aspects of the defense and shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third-Party Challenge. If City wishes to assist Developer when Developer has accepted the Tender, Developer shall accept that assistance and City shall pay City's own attorneys' fees and costs (including related court costs) ("**City Costs**"), and Developer shall pay its own attorneys' fees and costs (including related court costs), and shall indemnify and hold harmless City against any and all third-party fees and costs arising out of such Third Party Challenge (such third party fees and costs shall not include City Costs).

(d) If any part of this Agreement or any Project Approval is held by a court of competent jurisdiction to be invalid, the City shall: (1) use its best efforts to sustain and/or re-enact that part of this Agreement and/or Project Approval; and (2) take all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Agreement, and then adopting or re-enacting such part of this Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.07 Estoppel Certificate.

(a) Any Party may, at any time, and from time to time, deliver written notice to any other Party, and/or to the Developer's lender, requesting such Party to certify in writing that, to the knowledge of the certifying Party:

(1) This Agreement has not been amended or modified either orally or in writing or if so amended, identifying the amendments.

(2) The Agreement is in effect and the requesting Party is not known to be in default of the performance of its obligations pursuant to this Agreement, or if in default, to describe therein the nature and amount of any such defaults.

(b) This written certification shall be known as an "**Estoppel Certificate.**" A Party receiving a request hereunder shall execute and return such Estoppel Certificate within ten (10) days following the receipt of the request, unless the Party, in order to determine the appropriateness of the Estoppel Certificate, promptly commences and proceeds to conclude an Annual Review. The Parties acknowledge that an Estoppel Certificate may be relied upon by Assignees and other persons having an interest in the Project, including holders of mortgages and deeds of trust. The City Manager shall be authorized to execute an Estoppel Certificate for City.

(c) If a Party fails to deliver an Estoppel Certificate within the ten (10) day period, as provided for in Section 4.07(b) above, the Party requesting the Estoppel Certificate may deliver a second notice (the "**Second Notice**") to the other Party stating that the failure to deliver the Estoppel Certificate within ten (10) working days following the receipt of the Second Notice shall constitute conclusive evidence that this Agreement is without modification and there are no unexcused defaults in the performance of the requesting Party. Failure to deliver the requested Estoppel Certificate within the ten (10) working day period shall then constitute conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting Party.

4.08 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement ("**Assignee**"). Developer shall provide City with written notice of any assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed form of assignment agreement shall be subject to the written consent of City Attorney, which consent shall not be unreasonably withheld, delayed or conditioned. If the City does not respond to a request for approval of the form of assignment within fifteen (15) days such form shall be deemed approved by the City and no signature of the City shall be required. The written assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall

specify the portion of the Project or Property and the rights assigned and obligations assumed. The express written assumption by an Assignee of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations pursuant to this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form as may be approved by the City Attorney. Notwithstanding the above, Developer shall have the absolute right to assign the VLI Units to a separate legal entity to obtain, implement or refinance the 20-50 Financing upon normal and customary terms.

(b) Release Upon Assignment. Upon assignment, in whole or in part, and the express written assumption by the Assignee of such assignment, of Developer's rights and interests pursuant to this Agreement, Developer shall be released from its obligations with respect to the Property/Project (or any portion thereof), and any lot, parcel, or portion thereof so assigned to the extent arising subsequent to the effective date of such assignment. A default by any Assignee shall only affect that portion of the Property/Project owned by such Assignee and shall not cancel or diminish in any way Developer's rights or obligations hereunder with respect to the assigned portion of the Property/Project not owned by such Assignee. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property/Project owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property/Project owned by such Assignee.

(c) Covenants Run with the Land. This Agreement and all of its provisions, agreements, rights, powers, standards, terms, covenants and obligations shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Project and/or Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to Civil Code Section 1468. This Agreement shall not be binding upon any consumer, purchaser, transferee, devisee, assignee, or any other successor of Developer acquiring a completed residential unit comprising all or part of the Project ("**Consumer**") unless such Consumer is specifically bound by a provision of this Agreement or by a separate instrument or Agreement.

4.09 Encumbrances on the Property.

The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole and absolute discretion, from encumbering the Property, or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project, including in connection with any solar or renewable energy or conservation improvement financings or encumbrances. Mortgagee may require certain modifications to this Agreement, and City shall negotiate in good faith any such request for modification or subordination.

4.10 Obligations and Rights of Mortgage Lenders.

(a) The holder of any mortgage, deed of trust or other security arrangement with respect to the Property, or any portion thereof ("**Mortgagee**"), shall not be obligated pursuant to this Agreement to construct or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all of the terms and conditions of this Agreement that pertain to the Property or such portion thereof in which it holds an interest.

(b) Each Mortgagee and each party investing in the LIHTCs (collectively, the "**Affordable Finance Notice Parties**") shall be entitled to receive written notice from City of results of the annual review to be done pursuant to Section 4.04 and any default by Developer pursuant to this Agreement, provided each such Affordable Finance Notice Party has informed City of its address for notices. Each Affordable Finance Notice Party shall have a further right, but not an obligation, to cure such default in accordance with the default and default cure provisions in Sections 4.01, 4.02, and 4.03 of this Agreement. In the event Developer (or any permitted Assignee) becomes subject to an order for relief pursuant to any chapter of Title 11 of the United States Code (the "**Bankruptcy Code**"), the cure periods provided for a Affordable Finance Notice Party in Section 4.01(a) of this Agreement shall be tolled for so long as the automatic stay of Section 362 of the Bankruptcy Code remains in effect as to Developer (or any permitted Assignee); provided, however, if City obtains relief from the automatic stay pursuant to Bankruptcy Code Section 362 to declare any default by or exercise any remedies against Developer (or any permitted Assignee), the tolling of any Affordable Finance Notice Party's cure period shall automatically terminate on the earlier of: (i) the date that is sixty days after entry of the order granting City relief from the automatic stay, or (ii) the date of the entry of an order granting Affordable Finance Notice Party relief from the automatic stay. Each Affordable Finance Notice Party shall be entitled to receive written notice from City of the filing of any motion by City in which City seeks relief from the automatic stay of Section 362 of the Bankruptcy Code to declare any default by or exercise any remedies against Developer (or any permitted Assignee).

(c) Any Affordable Finance Notice Party who comes into possession of the Property, or any portion thereof, pursuant to a foreclosure of a mortgage or a deed of trust, or deed in lieu of such foreclosure, shall take the Property, or such portion thereof, subject to any pro rata claims for payments or charges against the Property, or such portion thereof, that have accrued prior to the time such holder comes into possession. In addition, any Mortgagee who comes into possession of the Property or any portion thereof, pursuant to a foreclosure of mortgage or deed of trust, or deed in lieu of such foreclosure, shall, subject to Section 4.10(a) above, be a permitted Assignee and, as such, shall succeed to all the rights, benefits and obligations of Developer pursuant to this Agreement.

(d) Nothing in this Agreement shall be deemed to be construed to permit or authorize any such holder to devote the Property, or any portion thereof, to any uses, or to construct any improvements thereof, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

4.12 Termination.

This Agreement shall terminate upon the expiration of the Term, as set forth in Section 1.03(a), or at such other time as this Agreement is terminated in accordance with the terms hereof, whichever occurs first. Upon termination of this Agreement, the City shall record a notice of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5

GENERAL PROVISIONS

5.01 Miscellaneous.

(a) Preamble, Recitals, Exhibits. References herein to "this Agreement" shall include the Preamble, Recitals and all of the exhibits of this Agreement.

(b) Requirements of Development Agreement Statute. The permitted uses of the Property; density and/or intensity of use of the Property; the maximum height and size of proposed buildings and other structures; provisions for reservation or dedication of land for public purposes; location of public improvements; and other terms and conditions applicable to the Project shall be those set forth in the Applicable Law.

(c) Governing Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California and legal actions commenced pursuant to or pursuant to this Agreement shall be brought in Santa Clara Superior Court. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs, including interest, as may be fixed by the court.

(d) Project as a Private Undertaking. No partnership, joint venture, or other association of any kind between Developer, on the one hand, and City on the other hand, is formed by this Agreement. The development of the Property is a separately undertaken private development. The only relationship between City and Developer is that of a governmental entity regulating the development of private Property and the owners of such private Property.

(e) Indemnification. Developer shall hold City, its elective and appointive boards, commissions, officers, agents, and employees, harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from Developer's contractors, subcontractors', agents' or employees' operations on the Project, whether such operations be by Developer or by any Developer's contractors, subcontractors, or by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer shall indemnify and defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have

been caused, by reason of any of the aforesaid operations and Developer shall pay all reasonable attorney's fees and costs that the City may incur. City does not, and shall not, waive any rights against Developer which it may have by reason of the aforesaid hold-harmless requirement of Developer because of the acceptance of improvements by City, or the deposit of security with City by Developer. The aforesaid hold-harmless requirement of Developer shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this subsection, regardless of whether or not City has prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

(f) Insurance. During the term of this Agreement, Developer shall maintain in full force and effect the insurance policies required in Exhibit D. These policies shall be maintained with coverage amounts, required endorsements, certificates of insurance and coverage verifications included, as defined in Exhibit D, attached hereto and incorporated by this reference.

(g) Interpretation/Construction. This Agreement has been reviewed and revised by legal counsel for both Developer and City, and any rule or presumption that ambiguities shall be construed against the drafting Party shall not apply to the interpretation or enforcement of this Agreement. The standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

(h) Notices.

(1) All notices, demands, or other communications that this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or mailed, via first class mail, to the respective Party at the below listed address. Notice shall be deemed effective and received five days after the date of mailing or upon personal delivery.

If to City: City Clerk
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7259

With a Copy To: City Attorney
17575 Peak Avenue
Morgan Hill, CA 95037
Tel: (408) 779-7271

If to Developer: MWest PropCo XXIII LLC d/b/a DivcoWest Silicon
Valley Investments
Attn: Ryan McDaniel

3351 Olcott Street
 Santa Clara, CA 95054
 Tel: (408) 450-3823

With a Copy To: Holland & Knight, LLP
 50 California St., Suite 2800
 San Francisco, CA 94111
 Attn: Tamsen Plume
 Tel: (415) 743 -6941

(2) Any Party may change the address stated herein by giving notice in writing to the other Parties, and thereafter notices shall be addressed and transmitted to the new address. Any notice given to the Developer as required by this Agreement shall also be given to any lender which requests that such notice be provided. Any lender requesting receipt of such notice shall furnish in writing its address to the Parties to this Agreement.

(i) Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Santa Clara County. Developer shall be responsible for all recordation fees, if any.

(j) Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a specific situation, is found to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

(k) Jurisdiction. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed pursuant to the laws of the State of California.

(l) Entire Agreement. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

(m) Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement may be executed in multiple originals, each of which is deemed to be an original.

(n) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

(o) Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Legal Description Property.

Exhibit B Description of Project.

Exhibit C Developer Commitments.

Exhibit D Insurance Requirements

IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL, CALIFORNIA
a California municipal corporation

APPROVED AS TO FORM:

DONALD A. LARKIN
City Attorney

CHRISTINA TURNER
City Manager
17575 Peak Avenue
Morgan Hill, CA 95037

ATTEST:

IRMA TORREZ
City Clerk

“CITY”

Attachment: Ordinance 2287- MWest (2030 : Adopt Ordinance 2287- MWest)

DEVELOPER:

Mwest PropCo XXIII LLC, a Delaware limited liability company, d/b/a, DivcoWest Silicon Valley Investments

By:	_____
	Signature of Person executing the Agreement on behalf of Developer
Name:	_____
	Steve Novick
Title:	_____
	Authorized Signatory
Local Address:	_____
	575 Market Street, 35 th Floor

	San Francisco, CA 94015

**(ALL SIGNATURES, EXCEPT CITY CLERK AND CITY ATTORNEY,
MUST BE ACKNOWLEDGED BY A NOTARY)**

Attachment: Ordinance 2287- MWest (2030 : Adopt Ordinance 2287- MWest)

EXHIBIT A**LEGAL DESCRIPTION OF THE PROPERTY**

All that real property situated in the City of Morgan Hill, County of Santa Clara, State of California, being all of "Lot 26" as shown on the Parcel Map filed September 27, 2000 in Book 732 of Maps, at Pages 16 through 19, Records of Santa Clara County, California, and all of "Parcel 4" as shown on the Parcel Map for Lot Line Adjustment filed June 22, 2017 in Book 904 of Maps, at Pages 47 and 48, Records of Santa Clara County, California.

Containing 19.505 acres, more or less.
END OF DESCRIPTION.

Attachment: Ordinance 2287- MWest (2030 : Adopt Ordinance 2287- MWest)

EXHIBIT A

EXHIBIT B**DESCRIPTION OF PROJECT**

Divco West SVI Measure S Application 2017 Butterfield Village dated January 4, 2018 prepared by TCA Architects and RJA Ruggeri-Jensen-Azar and Alma Du Soleir on file with the City under File No. , expressly excluding any reference to RDCS except as may be helpful for informational reference.

Attachment: Ordinance 2287- MWest (2030 : Adopt Ordinance 2287- MWest)

EXHIBIT B

EXHIBIT C**DEVELOPER COMMITMENTS****EXHIBIT C****Developer Commitments**

The following chart describes the Developer Commitments for the Project, including the applicable reference in the MHMC, a description, timing of implementation or payment. These commitments are in addition to any Project Mitigation (CEQA), Impact Fees, or other requirements pursuant to federal or state laws, or applicable provisions of the MHMC consistent with this Agreement (See Section 2.03 of the Agreement).

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
1.	Schools		
	Student Transportation Improvements	Project commits to construct off-site improvements valued at (and not to exceed) \$1,000/unit, including sidewalks along the industrial frontage of Butterfield Blvd (west side), along Jarvis Drive (south side) and the Sutter Road Extension (Digital Drive to the Project's proposed Main Street) where shown on the attached Exhibit B. Any remaining funds will be contributed to City's Safe Access to Schools Fund.	Prior to final certificate of occupancy.
2.	Location		
a	Water distribution lines	Local water distribution lines are of sufficient size to serve the Project. The Project does not require replacing existing local water distribution lines with large diameter pipes. New water mains to serve the site do not need to be installed. In-tract extension to occur along Sutter. The 12 inch water lines in Jarvis Drive and Butterfield Blvd provide adequate capacity to serve the site. However, the project is installing a new main in the Sutter Road Extension to contribute	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		toward the City's grid system, which will also serve the adjacent industrial project.	
b	Wastewater collection	<p>The existing wastewater collection system is sufficient to serve the Project. The Project does not require extending or replacing existing sewer pipes or lift stations outside of the Project Site. In-tract extension to occur along Sutter.</p> <p>An existing 10" sanitary sewer line in Jarvis Drive and a 20" sanitary sewer line in Butterfield Blvd provide adequate capacity to serve the project. In addition, the Project is voluntarily providing off-site sewer service in the new Sutter Road Extension to serve the adjacent industrial.</p>	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.
c	Off-site drainage facilities	<p>Existing off-site storm drainage facilities are sufficient to serve the Project.</p> <p>A 24" storm drain line in Jarvis Drive and a 54" storm drain line in Butterfield Blvd serve the site. In addition, the project site lies adjacent to a regional detention basin that will accommodate stormwater flows from the proposed development.</p>	As needed to serve the Project, but no later than prior to final certificate of occupancy.
3.	Affordable Housing		
	Development of Affordable Units	The Project will make 20% of units affordable to Very Low Income Households as defined by State Housing and Urban Development (HUD) Guidelines. Affordable units will be distributed throughout the site and proportionally amongst unit types.	See Section 2.04(b) of the Agreement.
4.	Housing Diversity		
a	Diversity of Housing Types	The project includes a diversity of 2 housing types: multi-family units, and single family attached townhomes. Both	Design Review; subject to 20-50 Financing Requirements.

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		housing types will represent at least 10% of the project.	
b	Variation in Housing Size	The project includes one and two-bedroom apartments. Please see sheet A-1.0 in the Schematic Design package in Exhibit B for full breakdown.	Design Review; subject to 20-50 Financing Requirements.
c	Small Units	A minimum of 50% of units in the Project are less than 1,000 SF. See also Sheet A-1.0 of Exhibit B for a description of unit size and distribution.	Design Review; subject to 20-50 Financing Requirements.
d	Housing Stock Diversity	The project is 100% multi-family rental.	Design Review.
5.	Parks and Open Space		
a	Excess Park Land	<p>The Project shall provide 5.82 acres of dedicated open space area which is more than 50% in excess of the requirement of 3.42 acres (389 @.0088 ac/unit).</p> <p>The project is providing a total of 114,093 sf (2.62 acres) within the residential acreage and a total of 139,000 sf (3.2 acres) for Central (aka Butterfield) Park, for a total of 5.82 acres, which exceeds the requirement under local ordinance by more than 50%. The Project will construct the park improvements, and the Park will be privately owned and maintained, but open to the public via a permanent public access easement.</p>	See Section 2.04(b) of the Agreement.
b	On-Site Recreational Amenities	<p>The Project shall provide a pool, a restroom area, 4 tot lots with at least three age appropriate activities, a clubhouse with kitchen, a jacuzzi and children's pool, and an exercise room.</p> <p>The project includes the following Tier 3 and 4 amenities: Junior Olympic Swimming Pool, Restroom, 4 Tot Lots/Playgrounds, Exercise Room,</p>	Design Review; prior to final certificate of occupancy.

EXHIBIT C

-3-

Attachment: Ordinance 2287- MWest (2030 : Adopt Ordinance 2287- MWest)

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		Clubhouse w/kitchen, Jacuzzi/children's pool. See Sheet R-2.0 of the Schematic Design package in <u>Exhibit B</u> for details. Note Central Park (aka Butterfield Park) amenities are NOT included in this calculation.	
c	Amenities for Age Group	The Project will provide amenities for all ages: Children - 2 tot lots, children's wading pool. Teens - 2 flex playgrounds & outdoor spaces for socializing. Adults - indoor gym, fire pit, bbq/picnic areas. Seniors - senior par course & walking paths. All ages - swimming pool, club room, picnic sites, trails. See Sheets R-2.0 and R-2.1 of the Schematic Design package in Exhibit B for details.	Design Review; prior to final certificate of occupancy
d	Public Gathering Places	<p>Central Park (aka Butterfield Park) will be a high value public gathering space located in a high-density mixed use residential/industrial area with a pedestrian network and easy access to public streets, visible and open to the public, and containing multiple seating areas and sheltered areas for year-round use.</p> <p>The Project will invest a minimum of \$2,000 per unit in park and open space improvements.</p>	Design Review; prior to final certificate of occupancy.
e	Open Space Design	<p>Project will include outdoor rooms; open space of sufficient size; well defined open space edges; visibility; adjacent units; and landscape. See Sheets R-5 and R-6 of the Schematic Design package in Exhibit B for details.</p> <p>The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.</p>	Design Review
6.	Environmental Protection		

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
a	Indoor Water Use	The Project commits to exceed minimum requirements for indoor water efficiency and conservation by no less than 10% per the California Green Building Standards Code (CalGreen) in place as of the date of the Effective Date of this Development Agreement. However, if construction on the Project has not commenced within 5 (five) years of the Effective Date of this Development Agreement, the Project must use the Build It Green checklist in effect at the time of application for building permits	Design Review; prior to final certificate of occupancy.
b	No Natural Turf Outside Common Areas	The Project contains no natural turf outside common areas used for active play.	Design Review.
c	Exceeds Outdoor Water Efficiency 20%	The Project commits to exceed outdoor water efficiency standards by 20% per the California Green Building Standards Code (CalGreen) in place as of the date of Effective Date of this Development Agreement. However, if construction on the Project has not commenced within 5 (five) years of Effective Date of this Development Agreement, the Project must use the Build It Green checklist in effect at the time of application for building permits	Design Review; prior to final certificate of occupancy.
d	Subsurface Irrigation	The Project commits to install subsurface irrigation for all private natural turf areas within the Project (not including Central (aka Butterfield) Park).	Design Review; prior to final certificate of occupancy.
e	Sustainable Site and Building Design	The project commits to score 16 BIG points above the minimum 70 points required by the City of MH Municipal Code as of the date of execution of this Development Agreement, for a total of 86 BIG points.	Design Review; prior to final certificate of occupancy.
7.	Transportation		

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
a	Off-Site Street and Parking Improvements or Fund Contribution	The Project will provide for the dedication and improvements to the off-site industrial serving portion of the Sutter Extension from Main Street to Digital Drive (a total of 670 LF). This portion is not required to serve the residential project. Project commitment equivalent to \$2,000/unit.	See Section 2.04(a)(4) of the Agreement.
b	Transportation Demand Management (rental projects)	The Project will provide the following TDM measures for the life of the project: (1) Move in package will include one month free car share membership for each unit, (2) one on-site cargo bicycle available for resident's use, and (3) establishment of and operation of a commute assistance center offering on-site, one-stop shopping for transit and commute alternatives information, or (4) other suitable alternate measures acceptable to the City.	Design Review; prior to final certificate of occupancy.
c	Aligns and connects streets	"Main Street" will align with the opposing Jarvis entrance to Madrone Plaza and connect to the new Sutter Extension to be constructed by the Project.	Design Review.
d	Extends Streets	<p>The southern extension of Sutter Road from the Project's private Main Street to Digital Drive will be considered out of tract improvements. The Project will extend streets to the adjoining undeveloped industrial land to provide access in the event of its future development.</p> <p>The Project will dedicate/construct the Sutter Extension, which will provide access to the adjacent industrial land via Butterfield Blvd.</p>	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.
e	Off-street bicycle and pedestrian connections	The Monterey/Sutter Greenways & Central Park (aka Butterfield Park) trails will be open to the public and secured by	Design Review; as necessary to serve the project, but in no

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		<p>permanent public access easement, providing off-street pedestrian/bike connections to/from Central Park (aka Butterfield Park, the industrial park, & retail on Monterey.</p> <p>Connections must be established and maintained through an easement, dedication or other similar method to guarantee it remains accessible to the public.</p>	event prior to final certificate of occupancy.
f	Complete Streets	Sutter and Main are multi-modal complete streets meeting the needs of multiple users with vehicular, pedestrian and bicycle access, as well as ADA compliant access & crossings.	Design Review; as necessary to serve the project, but in no event prior to final certificate of occupancy.
g	Enhanced bicycle and pedestrian improvements	Treated pavement is provided at all primary pedestrian street crossings. Curb neck downs are provided at pedestrian crossings within Main St. Each unit including a garage with secure bike storage.	Design Review; as necessary to serve the project, but in no event prior to final certificate of occupancy.
h	Direct pedestrian connections	The project provides direct pedestrian access (trails, sidewalks, crosswalks) from units to common open space, recreational facilities and to the adjacent Central (aka Butterfield) Park.	Design Review; as necessary to serve the project, but in no event prior to final certificate of occupancy.
i	Neighborhood traffic management techniques	The project includes traffic calming measures to enhance safety. Main St. includes medians, neck-downs, bulbouts & enhanced paving materials at significant entries/crossings.	Design Review; prior to final certificate of occupancy.
j	Electric Vehicle Charging Stations	The applicant commits to install all connections and equipment necessary for 4 charging stations to be ready to use by residents and visitors upon project completion.	Design Review; prior to final certificate of occupancy.

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
8.	Municipal Infrastructure		
a	Water Infrastructure	The Project commits to construct off-site water improvements in the Sutter Ext (Digital Drive to Main Street) in an amount not to exceed \$1,000/unit.	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.
b	Wastewater Infrastructure	The Project commits to construct off-site waste water improvements in the Sutter Extension (Digital Dr. to Main) in an amount not to exceed \$1,000/unit.	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.
c	Off-site storm water improvements	The Project commits to construct off-site storm water improvements in the Sutter Extension (Digital Dr. to Main) in an amount not to exceed \$1,000/unit.	To be constructed concurrent with the Sutter Road Extension improvements per Section 2.04(a)(4) of the Agreement.
d	Installs broadband conduit in public right-of-way	The project will install broadband conduit in the public right-of way, along the project frontages, as necessary to serve the Project. The project does not front on Monterey Road.	Design Review; as necessary to serve the project, but in no event prior to final certificate of occupancy.
e	Installs broadband conduit to home/buildings	The Project will install broadband conduit from the public ROW and/or from internal streets as necessary to provide service to each occupied building in the project.	Design Review; as necessary to serve the project, but in no event prior to final certificate of occupancy.
f	Pre-installs indoor conduit	The Project will pre-install indoor conduit, wiring and other necessary infrastructure to allow broadband service to each unit.	Design Review; as necessary to serve the project, but in no event prior to final

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
			certificate of occupancy.
9.	Project Quality		
a	Front Porches	<p>All first floor units will have a front porch with minimum dimensions of 6' x 5' with exterior entries included. (Sheets A-5.0 through A-5.5 in Exhibit B)</p> <p>The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.</p>	Design Review
b	Balconies Facing Street or Courtyard	<p>All upper floor units facing a street or common interior courtyard include a balcony (Sheets A-5.5 through R-3.0 in Exhibit B). The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.</p>	Design Review
c	Balconies Facing Alleys	<p>All upper floor units facing an alley, parking area or drive aisle include a balcony (Sheets A-5.5 through R-3.0 in Exhibit B).</p> <p>The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.</p>	Design Review
d	Façade Articulation and Finishes	<p>Elevations feature façade articulation & finishes that break up blank walls thru use of awnings, metal iron work, pot shelves, balcony rails, rafter tails, columns & finials. Sheets A-4.0-A-4.4 in Exhibit B)</p> <p>The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.</p>	Design Review
e	360-degree Architecture	<p>All buildings have four-sided architecture (Sheet A-4.4 in Exhibit B)</p> <p>The Project has demonstrated</p>	Design Review

EXHIBIT C

-9-

Attachment: Ordinance 2287- MWWest (2030 : Adopt Ordinance 2287- MWWest)

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	
f	Corner Treatments	The project includes enhanced corner treatments to support a welcoming and visually interesting public realm. (Sheets A-3.0 through A-4.4 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
g	Colors and Materials	The project incorporates a mix of colors and materials compatible with the style and creates visual interest. (Sheets A-4.0 through A-4.4 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
h	Multi-family Ground Level Entrances	All ground-floor units have private exterior entries (Sheets A-5.0 through A-5.5, R-3.0 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
i	Residential-Scale Design Elements- Attached Projects	Several building details are provided per this narrative (Sheet A-4.0 through A-4.4) in Exhibit B. The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
j	Variation in Building Height	Building heights vary between one, two- and three-story elevations. (Sheets A-4.0 through A-4.4 in Exhibit B) The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
k	Variation in Building Placement	<p>The project incorporates variation in building front setbacks to minimize monotony and create visual interest (Sheet A-2.0 and Sheet R-3.0)</p> <p>The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.</p>	Design Review
l	Roof Line Variation	<p>Elevation roof lines vary between 1 -3 stories. Some roof lines pop above the 3rd floor eave line. Design employs Hip, gable and shed roofs to articulate the roof line. (Sheets A-4.0 thru A-4.4 in Exhibit B)</p> <p>The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.</p>	Design Review
m	Height and Project Edge-Attached Projects	<p>2.5 story towns are located on perimeter streets to match exist. homes. Interior buildings step up to 3 stories. Edges/massing are articulated by dropped edges or raised towers. (Sheets A-2.0 - 4.0 thru A-4.4, R-3.0 in Exhibit B)</p> <p>The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.</p>	Design Review
n	Adjacent Building Types-Attached Projects	<p>The project places 2.5 story townhomes along the perimeter street edges that are consistent with the surrounding architecture. (Sheet R-3.0 and Sheets A-2.0, and A-4.0 in Exhibit B)</p> <p>The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.</p>	Design Review
o	Landscaping-Parkway Design	An additional 50% in planting strip width is provided within public and private	Design Review

EXHIBIT C

-11-

Attachment: Ordinance 2287- MWest (2030 : Adopt Ordinance 2287- MWest)

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		<p>street sections. Main Street --the central spine of the community-- includes a planted central median.</p> <p>The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.</p>	
p	Landscaping-Visual Relief	<p>Planting and paving materials are used to minimize appearance of building bulk and to highlight pedestrian routes, encouraging pedestrian circulation throughout.</p> <p>The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.</p>	Design Review
q	Exterior Lighting	Exterior lighting on the building will be architecturally integrated with the building design, style, color and material.	Design Review
r	Entrance Pathways	<p>All units have direct pedestrian pathways from public sidewalks.</p> <p>The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.</p>	Design Review
s	Public/Private Transitions	The project will include transition zones between private and public spaces along the street frontage through the use of landscaping, fences, trellises, walls, or a change in floor elevation. As shown in the schematic drawings submitted January 4, 2018 in Exhibit B the townhomes create some transition with raised stoops leading to front porches, and the stacked flats provide some transition with low walls enclosing patios/unit entries. (See Sheets A-2.0 and A-5.0 thru A-5.5 in Exhibit B).	Design Review

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		The project will demonstrate compliance through Design Review.	
t	Mechanical Equipment	<p>Mechanical equipment located within roof wells on stacked flats not visible from street or adjacent buildings; in townhomes located on grade at side of buildings and screened from view with landscaping and low fences. (Sheets A-5.0 thru A-5.5 in Exhibit B)</p> <p>The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.</p>	Design Review
u	Garage Door Orientation	<p>Garage doors do not face forward toward the main streets; they are located to the sides or rear of the buildings. (See sheet R-3.0 and Sheets A-5.0 thru A-5.5 in Exhibit B)</p> <p>The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.</p>	Design Review
v	Parking-Attached Projects	<p>Parking lots are carefully situated behind buildings so that parking is not located/visible between a building and a public sidewalk or street. (Sheet A-2.0 and Sheet R-3.0 in Exhibit B)</p> <p>The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.</p>	Design Review
w	Screening	Any parking visible from public streets behind buildings will be screened with landscaping and some low walls as shown on the site plan, building plans or elevations. (Sheets A-2.0 and A-4.0 in Exhibit B)	Design Review

No.	Category/Criteria	Description of Public Benefit/Commitment	Implementation Timing
		The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	
x	Landscaping-Attached Projects	Planting is strategically located throughout the project to minimize visibility of parking. The Project has demonstrated compliance, per schematic drawings submitted January 4, 2018 in Exhibit B.	Design Review
y	Pavement Design	Special zones, such as entry gateways, pedestrian crosswalks, speed tables and roundabouts are proposed to be paved with special color and/or textured unit pavers.	Design Review

END OF CHART

Attachment: Ordinance 2287- MWest (2030 : Adopt Ordinance 2287- MWest)

EXHIBIT D

INSURANCE REQUIREMENTS

Developer is required to procure and provide proof of the insurance coverage required by this Agreement in the form of certificates and endorsements. The required insurance must cover the activities of Developer and its subcontractors relating to or arising from the performance of work associated with the Agreement, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Agreement terminates.

The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or “umbrella” policies, provided each such policy complies with the requirements set forth herein. If Developer fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement, City may, at its sole discretion, purchase such coverage at Developer’s expense. Developer further understands that the City reserves the reasonable right to modify the insurance requirements set forth herein, with thirty (30) days’ notice provided to Developer, at any time as deemed necessary to protect the interests of the City.

A. Upon execution of Agreement:

(a) Policies and Limits. The following insurance policies and limits are required:

(1) Commercial General Liability Insurance (“CGL”): Developer shall maintain CGL and shall include coverage for liability arising from Developer’s (including its agents, representatives, officers, employees, invitees, volunteers, and contractors) activity, use and maintenance of the property against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage.

(b) Required Endorsements. Developer shall provide proof of the following endorsement to the General Liability policy:

a. “Additionally Insured” - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds.

B. Ten (10) days prior to start of any construction within the Project:

(a) Policies and Limits. The following insurance policies and limits are required for this Agreement:

(1) Commercial General Liability Insurance (“CGL”): Developer shall maintain CGL and shall include coverage for liability arising from Developer’s or its Subcontractor’s acts or omissions in the performance of work associated with the Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least five million dollars (\$5,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to Developer under Developer’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

b. CGL policy must include contractor’s protected coverage, blanket contractual, and completed operations.

(2) Workers’ Compensation Insurance and Employer’s Liability: Developer shall maintain Workers Compensation coverage, as required by law. The policy must comply with the requirements of the California Workers’ Compensation Insurance and Safety Act and provide protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Developer under Developer’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater. If Developer is self-insured, Developer must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

(3) Automobile Liability: Developer shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Developer does not own automobiles, then Developer shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to Developer under Developer’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

(4) Pollution (Environmental) Liability: The performance of Developer’s work or service under this Agreement involves handling of hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials. Developer shall procure and maintain Pollution Liability covering the Developer's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup

EXHIBIT D

-2-

Attachment: Ordinance 2287- MWest (2030 : Adopt Ordinance 2287- MWest)

costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to Developer under Developer's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(b) Required Endorsements. Developer shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

(1) ALL Policies:

"Waiver of Subrogation" - Each required policy must include an endorsement providing that the carrier agrees to waive any right of subrogation it may have against the City of Morgan Hill and the City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

(2) General Liability:

a. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds;

b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing;

c. "Separation of Insureds" - The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(c) Subcontractors. Developer must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 10, with respect to its performance of work associated with the Improvements, including those requirements related to the additional insureds and waiver of subrogation.

(d) Qualification of Insurers. All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.

C. Certificates. Developer shall furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the Developer's agreement with the City shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to City, unless due to non-payment of

premiums, in which case ten days written notice must be made to City. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

City of Morgan Hill
Attn: Risk Management
17575 Peak Avenue
Morgan Hill, CA 95037

Attachment: Ordinance 2287- MWest (2030 : Adopt Ordinance 2287- MWest)

EXHIBIT D

-4-



CITY COUNCIL STAFF REPORT

MEETING DATE: October 24, 2018

PREPARED BY: Angie Gonzalez, Council Services Assistant
APPROVED BY: City Manager

ADOPT ORDINANCE ADDING NEW CHAPTER 14.08 “IN-LIEU HOUSING FEE” TO TITLE 14 (HOUSING) OF THE MORGAN HILL MUNICIPAL CODE, ESTABLISHING IN-LIEU FEES FOR NEW RESIDENTIAL DEVELOPMENT OWNERSHIP AND RENTAL PROJECTS WITHIN THE CITY AND ADDING CHAPTER 14.12 “BELOW MARKET RATE PROGRAM” WHICH INCORPORATES A NEW BELOW MARKET RATE OWNERSHIP PROGRAM PARTICIPATION GUIDE AND A NEW BELOW MARKET RATE OWNERSHIP PROGRAM APPLICATION GUIDE, AND REPEALING CHAPTERS 15.22 “AFFORDABLE HOUSING FEE” AND 15.23 “BELOW MARKET RATE PROGRAM”

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2288, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Preserving and Cultivating Public Trust

2018 Strategic Priorities

Regional Initiatives

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

On October 17, 2018, the City Council introduced Ordinance No. 2288 New Series, by the following roll call vote: AYES: Carr, Constantine, Spring, Jachimowicz, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

The Housing Ordinance includes various housing policies. It will require new Housing In-Lieu fees to be implemented per habitable square foot of the residential building area of market-rate housing. The In-Lieu Housing Fee for For-Sale Ownership Residential Projects outside of Downtown for which there is a 15% Inclusionary Housing Requirement is nineteen dollars and seventy cents (\$19.70). The In-Lieu Housing Fee for “For-Sale” Residential Projects within the Downtown for which there is a 10%

Inclusionary Housing Requirement is thirteen dollars and twenty cents (\$13.20). The In-Lieu Housing Fee for “Rental” Residential Projects outside of Downtown for which there is a 15% Inclusionary Housing Requirement is twenty-nine dollars (\$29.00). The In-Lieu Housing Fee for “Rental” Residential Projects within the Downtown for which there is a 10% Inclusionary Housing Requirement is fourteen dollars and fifty cents (\$14.50). These fees are used for the preservation, creation, and administration of affordable housing projects and programs, and managed as part of the City’s existing affordable housing program.

The Below Market Rate (BMR) Ownership Program Participation Guide provides the guidelines and polices for existing BMR homeowners including but not limited to, the process for reselling a BMR, compliance, ownership, and estate planning. The Program Application Guide is available to describe the BMR opportunity and the application process to potential homebuyers.

The Affordable Housing BMR Development Standards establish criteria and requirements that the City will use to ensure that affordable residential units (rental and ownership), are planned and designed to guide the implementation and construction of the units, to ensure quality homes.

In conclusion, the Ordinance facilitates reorganization of existing Chapters in the Municipal Code for consistency. Chapter 15.22 “Affordable Housing Fee” is repealed and replaced by Chapter 14.08 “In-Lieu Housing Fee” in Title 14. Chapter 15.23 titled “Below Market Rate Program” of the Morgan Hill Municipal Code is repealed from Title 15 and added in Title 14 (Housing) as Chapter 14.12 Below Market Rate Program of Title 14 (Housing). Additionally, the following two sections are added to Chapter 14.12, 14.12.110 Below Market Rate (BMR) Ownership Program Participation Guide, and 14.12.120 BMR Ownership Program Application Guide. Section 14.12.130 incorporates the Development Standards by reference.

COMMUNITY ENGAGEMENT: Inform, Consult

A notice of the public hearing scheduled on October 17, 2018 was placed in the Morgan Hill Times on September 28, 2018.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City’s BMR Program Development Standards were presented with a report titled “Housing Program Update” and previously approved by City Council Resolution No. 16-081 on May 18, 2016. The BMR Ordinance was adopted on June 15, 2016. Most recently it was presented to the Planning Commission on September 25, 2018.

On July 18, 2018, the City Council introduced the Inclusionary Housing Ordinance No. 2278, adopted it on July 25, 2018, and it became effective on August 25, 2018. At the time of introduction, staff indicated that they would continue further refining the in-lieu fees and development standards.

On September 25, 2018 the Planning Commission received an update on the proposed housing fees and development standards.

On September 26, 2018, the City Council held a Housing workshop to discuss the proposed Housing Ordinance and received a supplemental report correcting one of the fees.

FISCAL AND RESOURCE IMPACT:

In-lieu fees are used for the preservation, creation, and administration of affordable housing projects and programs, and managed as part of the City's existing affordable housing program. There is no fiscal impact associated with this report.

CEQA (California Environmental Quality Act):

Not a Project:

This report is to inform policy regarding the Housing In-Lieu Fees and the Below Market Rate Program. Under the CEQA guidelines, activities that qualify to be listed as "Not a Project" include general policy and procedure making.

LINKS/ATTACHMENTS:

1. Ordinance 2288

ORDINANCE NO. 2288 NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
ADDING NEW CHAPTER 14.08 “IN-LIEU HOUSING FEE”
TO TITLE 14 (HOUSING) OF THE MORGAN HILL
MUNICIPAL CODE, ESTABLISHING IN-LIEU FEES FOR
NEW RESIDENTIAL DEVELOPMENT OWNERSHIP AND
RENTAL PROJECTS WITHIN THE CITY AND ADDING
CHAPTER 14.12 “BELOW MARKET RATE PROGRAM”
WHICH INCORPORATES A NEW BELOW MARKET
RATE OWNERSHIP PROGRAM PARTICIPATION GUIDE
AND A NEW BELOW MARKET RATE OWNERSHIP
PROGRAM APPLICATION GUIDE, AND REPEALING
CHAPTERS 15.22 “AFFORDABLE HOUSING FEE” AND
15.23 “BELOW MARKET RATE PROGRAM”**

WHEREAS, this proposed Ordinance was considered by the City Council of the City of Morgan Hill at its regular meeting of October 17, 2018; and

WHEREAS, testimony received at a duly-noticed public hearing on the proposed Ordinance, along with exhibits and other materials submitted as a part of public hearing, have been considered in the review process; and

WHEREAS, to increase the supply of affordable housing in Morgan Hill, the City of Morgan Hill has both a 15% (outside of downtown) and a 10% (within downtown) Inclusionary Housing Ordinance, and the Residential Development Control System (“RDSCS”) that awards points to projects correlated to the provision of affordable housing in the proposed development; and

WHEREAS, applicants competing in the RDSCS competition obtain points to satisfy the affordable housing requirement to build a percentage of their project as Below Market Rate (BMR) units or in some cases they pay the In-Lieu Housing Fee in lieu of building affordable housing on-site; and

WHEREAS, since 1977, the City has amassed one of the largest BMR property portfolios per capita in the State and established a BMR Program that provides ownership and rental opportunities and affordability to very low, low, and moderate-income households; and

WHEREAS, the City retained Keyser Marston and Associates (KMA) to conduct an analysis of the impact of the City’s Inclusionary Housing Ordinance and the RDSCS BMR requirements, and to:

1. Estimate the financial cost to developers of providing on-site BMR ownership and rental units equivalent to the percentages adopted in the Inclusionary Housing Ordinance;
2. Provide a comparison of the cost of providing on-site BMR units to the RDSCS program’s in-lieu fee and, if appropriate, recommend changes to the in-lieu fee amount so that it more closely approximates the cost of providing on-site units in today’s

market; and

WHEREAS, KMA recommended an ownership housing in-lieu fee of \$19.70 per square foot for residential development outside of downtown where there is a 15% Inclusionary Housing Requirement, and \$13.20 per square foot for ownership projects in the downtown where there is a 10% Inclusionary Housing Requirement. The recommended fees for Rental projects are \$29.00 per square foot for residential development outside of downtown where there is a 15% Inclusionary Housing Requirement, and \$14.50 per square foot for projects in the downtown where there is a 10% Inclusionary Housing Requirement. This would replace the previously adopted \$12.92 per square foot of the total project's livable space; and

WHEREAS, the Legislature of the State of California has found that the availability of housing is of critical statewide importance, and that providing housing for all Californians requires the cooperative participation of state and local governments and the private sector; and

WHEREAS, the City intends to establish In-Lieu Housing Fees in order to promote this objective, mitigate the impacts of new market-rate housing development on the need for affordable housing, assist in meeting the City's share of the Regional Housing Needs Allocation (RHNA), and assist in implementing the goals, policies and actions specified in the Housing Element of the City's General Plan; and

WHEREAS, the City Council adopted an Inclusionary Housing Ordinance No. 2278 on July 25, 2018, establishing a requirement for Residential Projects consisting of two (2) or more dwelling units where at least fifteen percent (15%) of all units in Projects outside of downtown shall be inclusionary units that shall be made available at affordable rents or affordable sales prices. For-Sale and Rental Projects consisting of two (2) or more dwelling units located within downtown are required to restrict ten percent (10%) of the dwelling units to be made available at affordable rents or affordable sales prices.

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 14.08 of Title 14 is hereby added to the Morgan Hill Municipal Code as follows.

Chapter 14.08 – IN-LIEU HOUSING FEES

- 14.08.010 Findings and Purpose.**
- 14.08.020 Fee Established.**
- 14.08.030 Applicability**

14.08.010 Findings and Purpose.

1. Need for in-lieu housing fees. The City Council has determined, based on the City's General plan including the housing element, and existing statutes and regulations of the State of California, that the In-Lieu Housing Fee is needed in order to finance the

- preservation of the existing Below Market Rate Portfolio, the administration of the Housing Program, future affordable housing programs and new projects.
2. Consistency with City General, Specific and Master Plans. In establishing the In-Lieu Housing Fee, the City Council finds that it is consistent with the City's General plan, including the housing element and applicable specific plans and master plans.
 3. The City of Morgan Hill Residential Development Control System ("RDSCS") awards competing developments points for construction of very low, low-income, and moderate-income housing or for the contribution of In-Lieu Housing Fees to the Housing In-Lieu Fee Fund.
 4. Since 1977, the City has amassed one of the largest below market rate ("BMR") property portfolios per capita in the State and established a BMR Program that provides ownership opportunities and affordability to very low, low-income, and moderate-income households.
 5. In-Lieu Housing Fees provide for the cost of administering the City's Housing Program, maintaining the BMR portfolio, as well as the creation and preservation of affordable units, as funding is available.

14.08.020 – Fee Established.

1. There is created an In-Lieu Housing Fee for new residential development for Residential Projects that are required or which volunteer to pay an In-Lieu Housing Fee.
2. For-Sale Residential Projects Outside of Downtown. The In-Lieu Housing Fee for "For-Sale" Residential Projects *outside of downtown* for which there is a 15% Inclusionary Housing Requirement is nineteen dollars and seventy cents (\$19.70) per habitable square foot of the residential building area of market-rate housing.
3. For-Sale Residential Projects Within Downtown. The In-Lieu Housing Fee for "For-Sale" Residential Projects *within the downtown* for which there is a 10% Inclusionary Housing Requirement is thirteen dollars and twenty cents (\$13.20) per habitable square foot of the residential building area of market-rate housing.
4. Rental Residential Projects Outside of Downtown. The In-Lieu Housing Fee for "Rental" Residential Projects *outside of downtown* for which there is a 15% Inclusionary Housing Requirement is twenty-nine dollars (\$29.00) per habitable square foot of the residential building area of market-rate housing.
5. Rental Residential Projects Within Downtown. The In-Lieu Housing Fee for "Rental" Residential Projects *within the downtown* for which there is a 10% Inclusionary Housing Requirement is fourteen dollars and fifty cents (\$14.50) per habitable square foot of the residential building area of market-rate housing.
6. Basis for calculation of the In-Lieu Housing Fee. The City approves, adopts, and incorporates the summary report from Keyser Marston Associates (KMA), entitled "Summary of Per Square Feet In-Lieu Fee Amounts for Ownership Projects Equivalent to Range of On-site BMR Requirements, and Summary of Per Square Feet In-Lieu Fee Amounts for Rental Projects Equivalent to Range of On-site BMR Requirements for Morgan Hill" dated September 25, 2018. This establishes the value of the In-Lieu Housing Fee, which is determined to be a fair and effective fee to maintain the BMR Program.

14.08.30 Applicability

1. The In-Lieu Housing Fees are established for Residential Projects and will be incorporated into development agreements entered into after the effective date of this ordinance.
2. All collected In-Lieu Housing Fees shall be used to finance the administration and implementation of affordable housing programs and projects within the City of Morgan Hill in support of the goals and objectives established in the City of Morgan Hill housing element.
3. The In-Lieu Housing Fee per square foot resulting from a calculation of total livable space of the market rate project, excludes the garages and other non-habitable space when calculating the total square feet of the project.
4. The In-Lieu Housing Fee will be paid by developers to satisfy their required contribution to the Housing In-Lieu Fee Fund.
5. Example Calculations of In-Lieu Housing Fee:
 1. Amount, \$19.70: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $\$19.70 \times 56 \text{ units} \times 2,000 \text{ square feet} = \$2,206,400$.
 2. Amount, \$13.20: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $\$13.20 \times 56 \text{ units} \times 2,000 \text{ square feet} = \$1,478,400$.
 3. Amount, \$29.00: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $\$29.00 \times 56 \text{ units} \times 2,000 \text{ square feet} = \$3,248,000$.
 4. Amount, \$14.50: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $\$14.50 \times 56 \text{ units} \times 2,000 \text{ square feet} = \$1,624,000$.
6. The In-Lieu Housing Fee must be provided to the Housing Division in proportion to the market rate units being delivered prior to Housing Division signing off for occupancy.
7. Whenever application of the Inclusionary Housing Requirements results in a fractional number of required Inclusionary Units of .49 or less, the Applicant may elect to pay the In-Lieu Housing Fee instead of developing the Inclusionary Unit.
8. Example Calculation of Fractional In-Lieu Housing Fee: the fractional BMR threshold is .5 to encourage the construction of new BMR units. The program applies the fractional fee to fractional requirements less than 0.5 of a unit. Project has 56 total units; average size of market rate units is 2,000 square feet. To receive maximum RDCS points the 56-total unit project has committed to a 15% affordable commitment, $56 \text{ units} \times 15\% = 8.4$. This equates to 8 on-site BMR units and a fractional fee payment due for the “.4” units. First, calculate the implicit in-lieu fee: $56 \text{ units} \times 2,000 \text{ square feet} \times \$19.70 \text{ per SF} = \text{an implicit in-lieu fee of } \$2,206,400$. From that implicit in-lieu fee, calculate the per BMR unit cost: $\$2,206,400 / 8.4 = \$262,666$. per BMR unit cost. The fractional payment owed for this project.

SECTION 2. Chapter 14.12 Below Market Rate Program of Title 14 (Housing) is hereby added to the Morgan Hill Municipal Code as follows.

Chapter 14.12 – Below Market Rate Program

14.12.010	Purpose and Findings
14.12.020	Definitions
14.12.030	Applicability
14.12.040	Duties of Program Administrator
14.12.050	Occupancy and Sale Restrictions
14.12.060	Affordable Housing Agreement
14.12.070	Approved Program Participants and Vendors
14.12.080	Default, Foreclosure, and Loss of Unit
14.12.090	Annual Report
14.12.100	Enforcement
14.12.110	Below Market Rate (BMR) Ownership Program Participation Guide
14.12.120	Below Market Rate (BMR) Ownership Program Application Guide for Potential Homebuyers
14.12.130	Below Market Rate (BMR) Program Development Standards

14.12.010 – Purpose and Findings.

The City Council finds that:

1. The City of Morgan Hill Residential Development Control System ("RDSCS"), awards competing developments points for provision of low-income and moderate-income housing and housing for the elderly.
2. Since 1977, the City has amassed one of the largest below market rate ("BMR") property portfolios in the state and established a BMR program that provides ownership opportunities and affordability to low-income and moderate-income households.
3. The excess sales proceeds value in each below market rate property represents a bona fide City asset that subsidizes the affordability for each BMR property owner ("owner") and is a vehicle that can be used to renovate older units, build new units, and help pay for program administration.
4. The City recognizes that the declaration of restrictions, which secures the excess sale proceeds, is a covenant that runs with the land by and between the BMR property owner and the City of Morgan Hill that restricts the right of use or enjoyment and should be enforced judicially.
5. A program and program guidelines are essential to maintain integrity of the BMR program and compliance therewith and these guidelines and policies will be updated from time to time to address challenges and changes in the market and economic environment.
6. In order to respond to program needs, the City Manager or his or her designee should be empowered to approve BMR program guidelines and BMR agreements.
7. In order to ensure compliance with the City's program the program must be actively administrated. The administration of the program can be achieved by City staff and/or an outside Administrator. The City is empowered to delegate the day-to-day management of the program to a third-party Administrator.
8. Either in-house or third-party administration is vital to ensure program integrity and continued affordability of below market rate properties.

9. In response to the dissolution of the City's redevelopment agency, schedules have been put in place to pay for the costs of services funded by former redevelopment agency funds.

14.12.020 - Definitions.

When used in this chapter, these terms mean the following:

1. "Adjacent lots" means parcels with boundary lines that touch at any point. "Adjacent lots" includes parcels that are separated only by a private or public street, other than highways and expressways, or that are separated only by other parcels owned or controlled by the same owner or applicant.
2. "Administrator" means below market rate program Administrator which may either be the City itself or a third party Administrator acting as an agent for the City in connection with all aspects of the operation of the City's below market rate program pursuant to an agreement entered into between the City and the Administrator, as such agreement may be amended or replaced from time to time.
3. "Area median income (AMI)" means the median household income of households in Santa Clara County, adjusted for household size, as determined, and published by the California Housing and Community Development Department (HCD).
4. "BMR assisted housing" means any project that receives development funding from any local, state, or federal governmental or non-profit source, which meets the criteria for below market rate housing.
5. "Assumed household size" means, for the purpose of establishing affordable sales prices, a household with a total number of members equal to the number of bedrooms in the below market rate home, plus one, consistent with Section 50052.5(h) of the California Health and Safety Code and applicable federal rules (if any). For example, the assumed household size for a three-bedroom home is a four-person household.
6. "Below market rate (BMR) ownership housing" means dwelling units developed to be sold and affordable to lower to moderate income households and regulated by this chapter. "BMR unit" means one BMR ownership housing dwelling unit.
7. "CC&Rs" means, covenants, conditions and restrictions containing a covenant that runs with the land existing in favor of the City where a development project contains at least one BMR unit.
8. "Covenant that runs with the land" means the BMR property interest held by the City of Morgan Hill as a result of the recorded declaration of restrictions that restrict the right of use of enjoyment by the BMR owner-occupant.
9. "Decision-making body" means the Planning Commission or City Council, whichever is authorized to make a final decision on the project application for land use approvals.
10. "Excess sale proceeds" means the difference between the fair market value of a BMR property and the maximum restricted resale price.
11. "Eligible buyer" means a household which meets the requirements of this chapter to buy, or in the case of acquisition of a BMR unit through devise or inheritance, to occupy, a

BMR unit; or a public or non-profit housing agency able to acquire and manage dwelling units for rental to eligible persons.

12. "Fee schedule" means the schedule of fees, adopted by City Council resolution, and published annually, that outlines charges to program participants, including, but not limited to applicants, owner-occupants, housing professionals and developers.
 13. "Gross annual household income" means the gross, pre-tax income of all adult occupants of the applicant household, and as may be further defined in the BMR ownership housing guidelines.
 14. "Housing cost" means the monthly mortgage payment (principal and interest), property taxes, owners' association dues, and owner's insurance.
 15. "Low income household" means a household with a gross annual household income between fifty-one percent and eighty percent of AMI for Santa Clara County. This definition corresponds to the definition of lower income household used for state- and federally-assisted housing programs.
 16. "Market rate unit" means a dwelling unit that is not subject to the occupancy or sale regulations in this chapter or any other affordability restrictions or covenants.
 17. "Moderate income household" means a household with a gross annual household income between eighty to one hundred twenty percent of AMI for Santa Clara County. This definition corresponds to the definition of moderate-income household for state-assisted housing programs.
 18. "Project" means one or more applications filed for City approval of a residential development. "Project" includes a development across adjacent lots or a multi-phased development, on the same or adjacent lots. "Project" also includes developments on adjacent lots for which applications are filed by the same owner or applicant within a period of ten years.
 19. "Property" means properties contained with the below market rate program portfolio subject to occupancy and sale restrictions.
 20. "Very low-income household" means a household with a gross annual household income that does not exceed fifty percent of AMI for Santa Clara County. This definition corresponds to the definition of very low-income household used for state- and federally-assisted housing programs. Very low-income households are a subset of lower income households.
- 14.12.030 - Applicability.
- A. Residential Development Control System ("RDSCS"). All projects subject to RDSCS that provide units to meet the City's need for low and moderate income and elderly housing and the extent to which such units meet the goals of the housing element of the general plan, including the distribution of housing types to provide neighborhoods of ethnic and economic diversity.
 - B. BMR Ownership Housing Guidelines. The Administrator develops detailed procedures and guidelines to ensure the orderly and efficient administration of the requirements of this chapter.

The BMR ownership housing guidelines shall be approved by the City Manager or the City Manager's designee and approved by the City Council from time to time.

- C. BMR Program Letters. BMR program letters may be issued by the Administrator to update procedures and guidelines not yet incorporated into the BMR ownership housing guidelines. These letters shall be approved by the City Manager or designee and serve as amendments to the guidelines that will be published online and made available to the public including guidelines for refinances, purpose, and hardship review.
- D. BMR Agreements. Declaration of restrictions and affordable housing agreements may be amended from time to time subject to the approval by the City Manager or the City Manager's designee.

14.12.040 - Duties of Program Administrator.

The City may either handle in-house or contract responsibility for administration of the BMR ownership housing program and monitoring compliance with the requirements to a program Administrator pursuant to an agreement executed between the City and the Administrator.

The Administrator shall perform the following services, among others:

1. Maintain and update the BMR ownership housing guidelines and BMR program letters;
2. Conduct ongoing homebuyer education training programs, including preparation of program materials;
3. Screen and select qualified buyers according to BMR ownership housing guidelines and maintain qualified owner eligibility list;
4. Assist in seeking and arranging mortgage financing for purchase of the below market units;
5. Administer programs for monitoring compliance with terms and conditions of the occupancy and sale restrictions;
6. Administer BMR ownership housing guidelines concerning sale and resale of the below market units at a restricted price, including exercise of the City's option to buy the below market units upon assignment of such option, and assist in resale of the unit to eligible purchasers or families; and
7. In cases of default, administer the process of taking possession of the BMR property as appropriate, and completing the acquisition, rehabilitation, and resale to an eligible buyer.

14.12.050 - Occupancy and Sale Restrictions.

Recordation of Declaration of Restrictions. Before issuance of any building permit for a BMR unit, the property owner, Administrator, and the City shall execute and record a declaration containing the occupancy and sale restrictions in this chapter. The declaration establishes a valid and enforceable covenant that runs with the land in favor of the City and is binding to the heirs, assigns and successors in interest of the property owner.

1. Timing of Sale. At completion of each BMR unit, the Administrator will be contacted to coordinate the sale of the property to an eligible buyer. The seller shall accept the first

- valid offer from a buyer deemed eligible by the Administrator and shall cooperate to close escrow within the timeframe outlined in the affordable housing agreement.
2. **Term of Restrictions.** BMR units shall be reserved for lower and moderate-income households subject to guidelines of the RDCS and shall be subject to the occupancy and sale restrictions for a specified period of time. This term begins upon sale to an eligible buyer. If the BMR unit is sold to another eligible buyer during the term, a new term shall begin upon resale and shall be secured by a new declaration of restrictions.
 3. **Maximum Sales Price.** The Administrator shall establish and publish annually the maximum sale prices for each BMR unit size in the BMR ownership housing guidelines as approved by the City Manager. The maximum BMR unit sale prices shall not exceed a price affordable to households at the applicable income level, based on a predetermined housing cost, specified with a maximum percentage of monthly gross household income for the unit's assumed household size. The percentage of AMI used shall be published annually by the Administrator.
 4. **Sale Requirements.** The following requirements shall be met in any sale and resale of a BMR unit after the issuance of a building permit and during the term of restrictions:
 - a. The seller shall notify the Administrator of the intent to sell before offering the unit for sale, contacting a real estate agent, or listing the property on any listing service
 - b. The Administrator shall respond to the seller with the sales procedure and maximum sale price
 - c. The Administrator shall follow the process outlined in the BMR Ownership housing guidelines to locate and deliver an eligible buyer to complete the home purchase
 - d. The eligible buyer shall execute and record a new declaration of restrictions which incorporates all current occupancy and sale restrictions in this chapter and in the BMR ownership housing guidelines; and
 - e. Closing costs and title insurance fees shall be paid or according to the BMR ownership housing guidelines.
 5. **Eligible Buyers.** The Administrator shall determine the eligibility of prospective buyers of BMR units. It is prohibited for any person to willfully make a false or misleading representation or fail to disclose information for the purpose of qualifying as eligible to purchase a BMR unit. Prospective buyers must meet the following requirements:
 6. **Income Limits.** The prospective buyer's combined household income and assets shall not exceed specific household income limits, as further defined in the BMR ownership housing guidelines;
 7. **Conflict of interest.** The following individuals, by virtue of their position or relationship, are ineligible to purchase a BMR unit:
 - a. Any Administrator, City official or employee who administers or has policy-making authority over City housing programs;
 - b. The developer of the unit; or

- c. The immediate relative or employee of, and anyone gaining significant economic benefit from a direct business association with, Administrator employees, City employees, officials, developers, or owners who are not eligible to purchase a BMR unit; and
 8. Additional Criteria. The Administrator may establish other reasonable eligibility criteria, ownership, and occupancy requirements in the BMR ownership housing guidelines to ensure the buyer's ability to close escrow, maintain ownership of the unit, and to ensure effective operation of the program and equitable access to the units among eligible buyers.
 9. Occupancy and Rental Restrictions. BMR units shall be occupied as the primary residence of the eligible buyer for the duration of their ownership of the unit and shall not be rented to other occupants at any time, except that:
 - a. BMR units that are owned by a public or nonprofit housing agency may be rented to eligible households with prior written approval of the Administrator; and
 - b. The Administrator may allow the temporary rental of a BMR unit upon a finding of hardship beyond the control of the owner and after a full review of the hardship documentation.
 10. Refinancing. BMR home owners shall not refinance a BMR unit without prior written approval of the Administrator. BMR units shall not be used as collateral to secure liens or debts with a combined loan to value ratio in excess of the BMR ownership housing guidelines of the maximum BMR resale price applicable to the unit at the time of the proposed refinancing.
 11. Additional Refinancing Criteria. The Administrator may establish other refinancing criteria in the course of seeking financing to change the rate and/or term of a mortgage, consolidate purchase money lines or cash out a portion of the excess sale proceeds that would be due to the owner upon sale.
- 14.12.060 - Affordable Housing Agreement.
- A. Required Before Final Map or Building Permit. Before final recordation of a subdivision map or issuance of any building permits for the project, whichever occurs first, the property owner shall execute and record an affordable housing agreement (agreement) with the Administrator and City outlining the details of the below market rate unit commitment as outlined in the "specific restrictions and requirements (including RDCS requirements)" of the development agreement.
 - B. Agreement Provisions. The agreement shall include, at a minimum, the following provisions:
 1. 1.Binding of Persons. A provision that binds the heirs, assigns, and successors in interest of the property owner to the agreement;
 2. Binding of Project Site. The obligation for the entire project site to fulfill the for the project under this chapter;

3. Liens. A lien on each unit identified to meet the BMR ownership housing requirement, or if the alternative to pay an in-lieu fee is approved, a lien on every unit;
4. Transaction Processing Fee. For each BMR unit, the developer shall pay a BMR transaction processing fee to the City according to the most current fee schedule approved by the City. The City may provide this fee to the Administrator as an offset to charges incurred. This fee is not a real estate commission or real estate broker commission. This fee shall be listed as an "additional settlement charge" fee paid by the seller as reflected in section 1300 of the U.S. Department of Housing and Urban Development (HUD) Settlement Statement (HUD-1) or "other costs" paid by the seller in the new closing disclosure as determined by the TILA-REPA Integrated Disclosure rule.
5. Project Covenants, Conditions and Restrictions. A provision that prohibits any amendments to the development's covenants, conditions and restrictions that would increase the proportion of the owners' association dues or assessments payable by any BMR unit. The provision must also acknowledge the covenant that runs with the land in favor of the City where the development project contains at least one BMR unit. This provision shall create a right of judicial enforcement by the City or the owner of any affected BMR unit.
6. Enforcement. A provision that shall require the property owner to pay the City rent for a BMR unit from the date of any unauthorized use of the unit, and for the City's recovery of reasonable attorney's fees and costs to pursue legal action in enforcing this agreement.
7. Amendments. Major amendments to the agreement, including any proposal to change any approved alternatives shall be reviewed by the decision-making body. Minor amendments to the agreement may be reviewed by the Administrator. Upon approval, a new agreement containing the amendments shall be executed and recorded.

14.12.070 - Approved Program Participants and Vendors.

The City and Administrator shall maintain a list of approved program participants and vendors to protect the integrity of the BMR program, BMR properties contained within the portfolio, and excess sale proceeds. The approval requirements and process will be included in the BMR ownership housing guidelines. The program participant list will include, but will not be limited to:

1. Mortgage Lenders. Due to the integral role that mortgage loan officers and lenders play in purchase and refinance transactions, first mortgage and subordinate loan officers and lenders must be approved by the Administrator and a lender agreement will be put in place concerning BMR program compliance during loan origination, underwriting and servicing. In no event shall a deed of trust securing any loan to a BMR Owner be valid or enforceable as to any recorded interest, resale agreement or option of the City of Morgan Hill unless the following conditions are satisfied:
 - a. The City of Morgan Hill or its Administrator has first approved the loan;
 - b. The loan is in accordance with the BMR ownership housing guidelines and any and all recorded deed restrictions;

- c. The City of Morgan Hill or its Administrator has expressly subordinated its recorded restrictions to the specific deed of trust; and
 - d. Prior to making any loan to a BMR property owner for the purchase of a BMR unit intended to be secured by a deed of trust against the BMR unit, a lender shall disclose to the City of Morgan Hill or its Administrator the following information:
 - i. The borrower's loan application describing the loan terms; and
 - ii. Provide an acknowledgement in writing that that the total encumbrance does not exceed the maximum restricted resale value for the BMR unit as determined by the City of Morgan Hill or its Administrator according to the BMR ownership housing guidelines.
2. Real Estate Agents. Real estate agents and brokerages involved in the purchase or sale of BMR properties must be approved by the Administrator and a vendor agreement will be put in place concerning BMR program compliance during the listing, purchase, and escrow process.
 3. Escrow Companies. An approved list of escrow officers and escrow companies will be maintained by the Administrator.
 4. Contractors. For work on BMR properties that exceed certain dollar amounts, as outlined in the BMR ownership housing guidelines, an approved list of contractors will be maintained by the Administrator.

14.12.080 - Default, Foreclosure, and Loss of Unit.

- A. Default. Upon declaration of a default by the City of any agreement between the City and the owner or if the owner or owner's proposed purchaser makes any misrepresentation in connection with receiving any benefits under the declaration of restrictions, the City or Administrator may apply to a court of competent jurisdiction for specific performance of this chapter, for an injunction prohibiting a proposed sale or transfer in violation of this chapter, for a declaration that a transfer in violation of this chapter is void or any such other relief at law or in equity as may be appropriate.
- B. Option to Purchase. If a notice of default is recorded on a BMR unit by a third party secured creditor or a lien is filed against the BMR unit, or any breach of any provision of any agreement between the City and the owner, and the owner fails to correct it, an eligible buyer, or the Administrator on behalf of the City or the City itself, may purchase the unit. The unit shall be purchased at a sale price equal to the amount the owner would have received on the date of the foreclosure sale under the BMR ownership housing guidelines. The eligible buyer may purchase the unit by paying any amounts due to lien holders and paying to the owner any balance of funds remaining after payment of the costs of sale and any repairs chargeable to the owner. All other resale provisions of the guidelines apply.
- C. Loss of Unit. BMR units which have not been completed or sold to initial eligible buyers shall not be released from the restrictions of this chapter through a trustee's sale or judicial foreclosure.

D. Distribution of Proceeds. This subsection applies to any BMR unit lost by sale at a trustee's sale or foreclosure, destruction, condemnation, or by liquidation of the owners' association. If a BMR unit is restored, the remaining term of occupancy and sale restrictions shall continue upon completion. Any proceeds remaining after payment of encumbrances on the unit shall be distributed as follows.

1. Owner. To the owner, up to the net amount the owner would have received under the sale price in the BMR ownership housing guidelines if the City had purchased the unit on the date of the loss; and
2. City. To the City, any surplus remaining after payment to the owner.

14.12.090 - Annual report.

The Administrator shall provide an annual informational report to the City Council on the status of BMR units developed under this chapter. The report shall include the number, size, type, tenure, and general location of each BMR unit completed during the year, as well as the number of BMR resales and BMR defaults and losses, if applicable.

14.12.100 - Enforcement.

The City, or Administrator if authorized, may institute injunction, mandamus, or any appropriate legal actions or proceedings necessary for the enforcement of this chapter, including actions to suspend or revoke any permit, including a development approval, building permit or certificate of occupancy; and for injunctive relief or damages.

14.12.110 Below Market Rate (BMR) Ownership Program Participation Guide

The purpose of the Below Market Rate (BMR) Ownership Program Participation Guide (Ownership Guide) is to describe the BMR Program policies and procedures to an existing BMR homeowner who is a Program participant. The Ownership Guide includes the following and is intended to be an overview for a Program participant who is occupying a BMR home. The Ownership Guide describes the policies and procedures for a BMR homeowner, including:

- Program participation guidelines
- Resale price determination and Household Information Profiles
- Sale proceeds and owner's minimum return on down payment
- Agreement compliance at the point of sale or refinance
- Ownership and estate planning
- Compliance and annual certification
- Refinance and subordination requests
- Capital Improvements and Special Assessments
- Ownership Changes, Re-Sales, and Approved Vendors

The Ownership Guide is prepared by the City and/or the Administrator to provide procedures and guidelines. Any updates shall be approved by the City Manager or the City Manager's designee

from time to time as needed and may serve as amendments to the Ownership Guidelines that will be published online and made available to the public.

14.12.120 Below Market Rate (BMR) Ownership Program Application Guide for Potential Homebuyers

The purpose of the Below Market Rate (BMR) Ownership Program Application Guide (Application Guide) describes the BMR Program policies and procedures to a prospective BMR homeowner who is considering the BMR Program application process. The Application Guide includes the following and is intended to be an overview for a Program applicant who is considering applying for a BMR home.

- Application process and selection, opportunity drawing methods
- File Structure and Application Criteria, Online Web Portal, Establishing an Account
- Education Title and Mortgage Requirements
- Eligibility and Preference Criteria for Ownership of BMR Units
- Occupancy Standards for BMR Units
- Income Eligibility Criteria and Preference Criteria
- Asset Limitation Criteria
- First Time Homebuyer Criteria and Title Requirements
- Household Information Profiles
- Application Criteria
- Transaction and Document Handling
- Reasonable Accommodation
- Below Market Rate Pricing and City's Option to Purchase

The Application Guide may be prepared by the City and/or the Administrator to provide procedures and guidelines. Any updates shall be approved by the City Manager or the City Manager's designee from time to time as needed and serve as amendments to the Application Guidelines that will be published online and made available to the public.

14.12.130 Below Market Rate (BMR) Program Development Standards

- A. Development Standards approved by City Council are designed to guide the implementation and construction of the Below Market Rate (BMR) units, to ensure quality homes are built consistent with the character of the neighborhood and providing guidance for the inclusion of materials and amenities within each unit.
- B. The BMR Development Standards are generally intended to apply to development projects where proposed BMR inclusionary units will be constructed by a developer constructing a market rate project, but these BMR Development Standards would not typically apply to publicly financed 100 percent affordable housing projects.
- C. The City may consider instances where deviations from these standards may be appropriate for the provision of inclusionary or affordable units. The designated reviewing body shall

make a finding to this effect prior to any approval or any issuance of permits (i.e., Community Development Director, Planning Commission, or City Council). This includes, but is not limited to:

1. When the deviation results in a greater number of affordable units and/or broaden affordability levels to help the City implement its Housing Element and achieve RHNA goals.
 2. Developments in which a market rate developer is partnered with an affordable housing developer in which the market rate developer develops only the market rate units while the affordable housing developer develops the affordable units, some of the BMR Program Development Standards, such as the distribution throughout the project requirement, may not apply or may need to be adjusted.
- D. Any updates to the BMR Program Development Standards shall be approved by the City Manager or the City Manager's designee from time to time as needed and serve as amendments to the BMR Program Development Standards that will be published online and made available to the public.

SECTION 3. Subsection D of Section 14.04.060 is repealed.

SECTION 4. Chapters 15.22 "Affordable Housing Fee" and Chapter 15.23 "Below Market Rate Program" of the Morgan Hill Municipal Code are hereby repealed in their entirety.

SECTION 5. The revised Below Market Rate (BMR) Program Development Standards are hereby adopted.

SECTION 6. The City Council hereby finds that the proposed Ordinance is exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of Guidelines for CEQA. The proposed In-Lieu Housing Fee and Below Market Rate Program Ordinance are covered by the general rule that CEQA applies to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Adoption of this ordinance does not create changes in the physical environment and is therefore exempt pursuant to the exemption described above.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance or a summary thereof pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 17TH DAY OF OCTOBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 24TH DAY OF OCTOBER, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

APPROVED:

STEVE TATE, Mayor

ATTEST:

DATE:

IRMA TORREZ, City Clerk

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2288, New Series adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 24th day of October 2018.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Ordinance 2288 (2031 : Adopt Ordinance 2288- Housing Ordinance)



CITY COUNCIL STAFF REPORT

MEETING DATE: October 24, 2018

PREPARED BY: Donald Larkin, City Attorney
APPROVED BY: City Manager

ADOPT AN ORDINANCE REQUIRING SAFE STORAGE OF FIREARMS, REPORTING THEFT OR LOSS OF FIREARMS, AND PROHIBITING POSSESSION OF LARGE CAPACITY MAGAZINES

RECOMMENDATION(S)

1. Open/close public hearing;
2. Waive the first and second reading of the ordinance; and
3. Introduce the ordinance amending Chapter 9.04 titled "Weapons," to require the safe storage of firearms when not attended, to require the reporting of the theft or loss of firearms, and to prohibit the possession of large capacity magazines.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Supporting Our Youth
Seniors
and Entire Community

POLICY CONSIDERATIONS:

1. Should Morgan Hill residents be required to report the theft or loss of a firearm to the Morgan Hill Police Department?
2. Should the City adopt an ordinance requiring the safe storage of firearms when they are not in use?
3. Should the City prohibit the possession of large capacity magazines?
4. Should the City explore opportunities to sponsor gun safety programs or classes?
5. Should the existing City ordinance be amended to remove or relax restrictions on the discharge of weapons in Morgan Hill?

REPORT NARRATIVE:

Background:

At its May 16, 2018 meeting, the City Council directed the City Attorney to prepare ordinances for City Council consideration that:

1. Require Morgan Hill residents to report the theft or loss of a firearm to the Morgan Hill Police Department;
2. Require the safe storage of firearms when they are not in use;

3. Prohibit the possession of large capacity magazines; and/or
4. Require a City permit to conduct retail firearm and/or ammunition sales.

In addition, the Council requested the formation of an ad hoc Council subcommittee, consisting of Council Members Constantine and Spring, to hear the concerns and suggestions of the community, and to consider those concerns and suggestions in crafting policy.

The ad hoc subcommittee met one time on May 8, 2018. About 15 community members attended the meeting. Most of the attendees were gun owners who were opposed to the proposed changes to the Municipal Code. Several people raised concerns about the way the Sunnyvale ordinance is being enforced, and some of the potential implications of the safe-storage ordinance. Specifically, attendees felt that a requirement that firearms be safely stored “except when carried on his or her person or in his or her immediate possession” would encourage gun owners to carry their firearms with them when answering the door or in other circumstances in which carrying a firearm may be unnecessarily dangerous. Changes have been made to the draft ordinance based on these comments.

As an alternative to the proposed ordinance changes, several attendees advocated for more firearms education in the community, and suggested programs geared towards educating youth about firearms safety.

Several community members spoke in favor of the proposed ordinance.

In addition to the ad hoc subcommittee meeting, the City held a well-advertised community forum on September 25, 2018. The community forum was attended by several City teammates, including Council Member Constantine, but only five community members attended. Two of the community members advocated for stronger measures to prevent gun violence. One community member expressed reservations about potential restrictions on gun ownership but did not have specific comments on the proposed ordinance.

Following the community meeting, a redline draft ordinance was made available on the City website. We received numerous comments on the ordinance. However, the overwhelming majority of comments were about the City’s existing prohibition on the discharge of weapons within City limits. While not part of the current proposal, we will address the comments on the existing ordinance below. In addition, there were a few suggestions for improving the proposed draft that we have incorporated. Attachment 7 to this report is a compilation of written correspondence received prior to publication of the report.

Attachment 1 to this report is the revised proposed ordinance that we recommend for adoption.

Reporting theft or loss of firearms:

In 2011, the Association of Bay Area Governments (ABAG), issued a report titled “A High Price to Pay: The Economic and Social Costs of Youth Gun Violence in San Mateo County.” (Attachment 2). The Report outlines several suggestions for improving local firearms regulations. Based on the Report, the ABAG Executive Board approved model ordinances and took action to encourage all member jurisdictions, including the City of Morgan Hill, to adopt the model ordinances. One of the model ordinances recommended by ABAG is a “Model Ordinance Requiring Reporting of Lost or Stolen Firearms. (Attachment 3 is a link to the model ordinances).

Laws requiring gun owners to report the loss or theft of a firearm serve several purposes. Reasons for requiring theft reporting include:

- When a crime gun is traced by law enforcement to the last purchaser of record, the owner may falsely claim that the gun was lost or stolen to hide his or her involvement in the crime or in gun trafficking. Reporting laws provide a tool for law enforcement to detect this behavior and charge criminals who engage in it.
- When a person who legally owned a gun becomes prohibited from gun ownership, it is important that law enforcement remove the firearm from his or her possession. Reporting laws help disarm prohibited persons by deterring them from falsely claiming that their firearms were lost or stolen.
- Reporting laws protect gun owners from unwarranted criminal accusations when their guns are recovered at a crime scene and make it easier for law enforcement to locate a lost or stolen firearm and return it to its lawful owner.
- The danger that lost or stolen firearms pose to public safety requires a heightened level of accountability on the part of individuals who choose to own firearms. Reporting laws make gun owners more accountable for their weapons.

Under California law, “every person shall report the loss or theft of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost.” Pen. Code, § 25250

The proposed ordinance both clarifies and expands on the Penal Code requirements. Under the Penal Code a person must report the theft or loss of a firearm to “a local law enforcement agency.” There are multiple local law enforcement agencies that operate in Morgan Hill, so we believe it is important to clarify that the appropriate local law enforcement agency in Morgan Hill is the Morgan Hill Police Department.

The proposed ordinance also requires the reporting to occur within 48 hours of discovery of the loss or theft, rather than the five days provided in California law. Earlier notification of lost or stolen firearms allows police to more easily identify stolen weapons during the course of an investigation. The 48-hour reporting period also provides an

opportunity for early identification and may reduce the chance of lost or stolen firearms being used in additional crimes. Other local ordinances, such as San Jose's, require reporting within 24 hours.

The proposed ordinance follows ABAG's recommendations. However, rather than copying the language of the model ordinance, we based our proposal on the ordinance adopted by the City of Sunnyvale. Sunnyvale's language has been in place for several years without any significant issues, and we believe it is easier to understand and enforce than the model ordinance language.

Safe Storage of Firearms:

The provisions of the proposed ordinance requiring the safe storage of firearms are intended both to discourage the theft of firearms and to prevent accidents and suicides.

According to a 2018 report in the *Journal of Urban Health*, more than half a million firearms are lost or stolen from private residences each year. (See Azrael, D., Cohen, J., Salhi, C. et al J Urban Health (2018) 95: 295 <https://doi.org/10.1007/s11524-018-0261-7>). Safe storage laws help prevent theft of firearms left unattended in people's homes.

In addition, safe storage laws can help prevent accidental injury and suicide. The office of County Supervisor Cindy Chavez has put together a white-paper that compiles available research regarding suicide by firearms in Santa Clara County. (Attachment 4). According to the available research:

- Suicide accounts for more than half of all firearm deaths in the US (61% in 2014) and in California. Firearm suicide rates have been consistently higher than firearm homicide rates since before the 1990s.
- In Santa Clara County, most suicides are by adult men. Men are more likely to use firearms as the means for suicide. Firearm usage is lethal 95% of the time.
- Firearms are the second most commonly used means for suicide in Santa Clara County (after asphyxiation), and the most common means used by adults over 45.
- At least one-third of handguns are stored, loaded, and unlocked, and most kids know where guns are kept in their house—even if parents think otherwise.
- A National Violent Injury Statistics System (NVISS) investigation studied firearm suicides among youths ages 17 and under occurring over a two-year period in four states and two counties found that 82% used a firearm belonging to a family member, usually a parent. When storage status was noted, about two-thirds of the firearms had been stored unlocked.

Project ChildSafe, a program of the National Shooting Sports Foundation, identifies the safe storage of firearms as the number one way to help prevent firearms accidents. Project ChildSafe's recommendations for safely storing firearms can be found on their [website](#).

In drafting our proposed ordinance, we looked at ordinances recently enacted in Sunnyvale and in San Jose. Sunnyvale's ordinance requires firearms to be locked unless they are carried on the owner's person, or within his or her immediate control and possession. San Jose's ordinance requires firearms to be locked up when the owner is away from home.

In our community discussions, some residents expressed concern that Sunnyvale's ordinance is overly restrictive and might encourage people to carry their weapons more frequently, leading to more accidents. San Jose's ordinance is less restrictive but may not be as effective in curbing access to firearms by minors and others who should not have access to firearms.

To ensure effectiveness, we recommend following Sunnyvale's model. However, rather than requiring safe storage when a firearm is not within the owner's immediate control and possession, the proposed draft requires safe storage any time the firearm is unattended, which is slightly less restrictive and would allow a gun owner to leave a firearm unlocked while he or she is in the general vicinity.

In addition to the concerns addressed above, at least one member of the community expressed a concern that the ordinance uses the state definition of the term "firearm," which includes antique and antique-reproduction firearms. According to the resident who raised this issue, antique firearms are unlikely to be used in a crime or suicide attempt and cannot be accidentally discharged. If Council shares this concern, the definition of the term "firearm", for purposes of the safe storage provisions, could be amended to exempt certain antique firearms. Crafting a limited exemption applicable to the proposed ordinance would require additional research. If so directed, we would bring back exemption language at a future meeting.

Large Capacity Magazines:

The ability of an automatic or semi-automatic firearm to fire multiple bullets without reloading is directly related to the capacity of the firearm's feeding device or "magazine." Inside the magazine, a spring forces a cartridge (ammunition, generally containing a bullet, a propellant, and an ignition device) into position to be fed into the weapon's chamber.

Magazines with a capacity of more than 10 rounds of ammunition are generally considered to be "large capacity" magazines, although the statutory definitions vary. In some cases, large capacity magazines can hold up to 100 rounds of ammunition.

Large capacity magazines are frequently used in mass shootings, including those in San Bernardino, CA; Sutherland Springs, TX; Las Vegas, NV; Orlando, FL; Sandy Hook, CT; and Aurora, CO. When assault weapons and high capacity magazines are used in a mass shooting, the number of people shot goes up by 135% and the number of people killed goes up by 57%. (See attachment 5.)

Since January 1, 2000, Penal Code section 12020(a)(2) prohibits the manufacture,

importation into the state, keeping for sale, offering, or exposing for sale, giving, or lending large capacity magazines. However, California law does not prohibit the *possession* of large capacity magazines. Anyone who legally purchased a large capacity magazine in California before January 1, 2000 is allowed to keep and use that magazine.

Since 2000, several California cities, including Sunnyvale, Richmond, San Francisco, and Los Angeles have enacted local ordinances prohibiting the possession of large capacity magazines within city limits. Sunnyvale's ban on large capacity magazines survived legal challenge. (See the case of *Fyock v. Sunnyvale*, (2015) 779 F.3d 991).

In 2016, California voters approved a statewide ban on large capacity magazines (Proposition 63). However, enforcement of the ban is currently on hold following a preliminary injunction by the United States District Court for the Southern District of California. (See *Duncan v. Becerra* (2017) 265 F.Supp.3d 1106). In distinguishing the Sunnyvale ban from the statewide ban, the Southern District Court relied on a number of factors, including Sunnyvale's low crime rate, the increased risk of a stray bullet penetrating walls or wounding bystanders, and the ability of law enforcement to quickly respond to an emergency. The Court compared these factors to other areas, where the population is far more remote and police response times are likely to be much longer and the risk of a bullet striking a bystander or penetrating a neighboring structure is remote.

Like Sunnyvale, Morgan Hill has a low rate of violent crime and the Morgan Hill Police Department is able to quickly respond to any location within the City. Further, while Morgan Hill has more open space than Sunnyvale, Morgan Hill is an urban community with population densities that are high compared to remote counties.

Of the changes in the proposed ordinance, the ban on large capacity magazines has generated the most concern. One attendee at the ad hoc subcommittee meeting raised a concern that requiring him to surrender his legally purchased magazines is an illegal taking. Others expressed a general concern that they would go from being law abiding citizens to criminals overnight. While we do not agree that the proposed ordinance would enact a taking, the concerns expressed by responsible gun owners are valid.

One resident recommended changing subsection 9.04.050(C)(8) of the draft ordinance to exempt all large capacity magazines that were included with a firearm that was purchased prior to January 1, 2000, and the person possesses the large capacity magazine solely for use with that firearm. If Council agrees with this change, that recommendation can be made as part of a motion approving the ordinance.

Proposed Deletions:

The proposed ordinance would delete some language in the section numbered 9.04.020. The reason for removing this language is that the ordinance requirements are entirely duplicative of state law as it existed when the ordinance was adopted in 1995. State law has since been strengthened to impose more stringent requirements for the

safe storage of firearms by retailers, so those ordinance provisions are no longer necessary or enforceable.

Permit Requirements for Retail Firearm and/or Ammunition Sales:

This proposed ordinance does not include permit requirements for retail firearm or ammunition sales. While the issues and concerns of retailers may overlap with those of firearms owners, most of the concerns expressed by the public are related to the three proposals contained in the current draft. Permit requirements for retailers also require a different legal and policy analysis. We plan to work separately with our current firearms retailers to bring back a proposed ordinance next month.

Existing City Prohibitions on the Discharge of Firearms and other Weapons:

As noted above, the overwhelming majority of e-mail comments the Council has received relate to the City's existing code. Since 1970, the City of Morgan Hill has required a permit to discharge weapons within the City limits. (See attachment 6).

Morgan Hill's requirements are not unique. Jurisdictions around the country have adopted similar permit requirements, including fourteen of the fifteen cities and towns in Santa Clara County. While two of the city ordinances in Santa Clara County are specific to projectiles shot from guns, twelve regulate the discharge of "missiles."

Many of the commenters expressed concern that the ordinance requires a permit for the use of innocuous items like children's toys and construction equipment. This interpretation is based on a very broad definition of the term "missile," which is not supported by case law or the context of the code provisions.

The term "missile" is used by many jurisdictions, including the State of California, to refer specifically to projectiles that are used as weapons. While there are very few court cases that define the term missile, in a recent decision, the Ninth Circuit Court of Appeals discussed the meaning of the term as used in statute:

"Dictionaries generally provide two separate definitions of missile: one broad and generic definition including all things thrown as weapons and one definition that aligns with our modern usage of the term missile to describe a sophisticated piece of weaponry . . . For example, the Oxford Dictionary defines a missile as: (1) "an object which is forcibly propelled at a target, either by hand or from a mechanical weapon," or (2) "a weapon that is self-propelled or directed by remote control, carrying conventional or nuclear explosive."

U.S. v. Flores (9th Cir. 2013) 729 F.3d 910, 914–915. Both of these definitions define the term missile as a form of weapon. Further, in the context of a chapter titled "Weapons," it is clear that the term missile refers to projectiles that are or are projected from weapons.

The term “weapon” is commonly understood to refer to a thing that is designed or used to cause bodily harm or damage. As such, the ordinance only restricts the use of instruments that project objects that are designed or used to cause bodily harm. It would not apply to children’s toys or other innocuous objects.

COMMUNITY ENGAGEMENT: Consult

As discussed above, City staff engaged in extensive outreach and took community comments into consideration when drafting the proposed ordinance.

ALTERNATIVE ACTIONS:

The Council could direct the City Attorney to return with a revised ordinance that includes only some of the proposed additions.

The Council could direct the City Attorney to prepare an ordinance amending the existing prohibition on the discharge of weapons without a permit.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 7, 2018, the City Council adopted a resolution condemning recent mass shootings and advocating for local, state, and federal measures to reduce gun violence.

On March 19, 2018, the City Council directed the City Attorney to draft ordinances requiring gun owners to report the loss or theft of a firearm; requiring the safe storage of firearms; prohibiting the possession of large capacity magazines; and requiring a local permit to conduct retail firearm and/or ammunition sales.

On May 16, 2018, the City Attorney provided an update to Council on the proposed ordinances. At that meeting, Staff was directed to conduct further outreach to the community, including a meeting with an ad hoc committee of the Council. Those community outreach efforts are discussed above.

FISCAL AND RESOURCE IMPACT:

Some staff time will be required for additional outreach and education. All staff time, including enforcement, will be incorporated into existing work-plans.

CEQA (California Environmental Quality Act):

The proposals set forth in this report are exempt from CEQA under Guideline §15061(b) because the actions as proposed will have no significant effect on the environment.

LINKS/ATTACHMENTS:

1. Firearms Ordinance
2. Youth Gun Violence Report 2011
3. ABAG Model Ordinances (weblink)
4. FINAL Firearm Suicides Paper_Sup. Chavez Aug18
5. Article: How High is Our Capacity for Carnage (weblink)
6. Ordinance No. 290
7. Public Comment on Gun Violence Ordinance
8. 04 Presentation

- 9. 04 Supplement 1
- 10.04 Supplement 2
- 11.04 Supplement 3
- 12.04 Supplement 4

ORDINANCE NO. _____, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
AMENDING CHAPTER 9.04 (“WEAPONS”) OF TITLE 9
 (“PUBLIC PEACE, MORALS AND WELFARE”) OF THE
MORGAN HILL MUNICIPAL CODE TO REQUIRE SAFE
FIREARMS STORAGE, REQUIRE THE REPORTING OF
FIREARMS THEFT, AND PROHIBIT LARGE CAPACITY
MAGAZINES**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA DOES
ORDAIN AND ENACT AS FOLLOWS:**

SECTION 1: Chapter 9.04 (“Weapons”) of Title 9 (“Public Peace, Morals and Welfare”) is hereby amended to read as follows:

“9.04.010 - Discharge—Permit required—Fee.

A. No person shall discharge in the city, outside of a licensed shooting range, any instrument or device of any kind, character or description which discharges, propels or hurls bullets, missiles of any kind to any distance from such instrument or device by means of elastic force, air pressure, vacuum, explosive force, mechanical spring action or electrical charge, without first having applied for and obtained a written permit therefore from the chief of police.

B. Subject to review by and as specifically directed by the council, the chief of police shall be the sole judge as to the desirability or necessity of such permit, which must be, in his judgment, necessary for the protection of the applicant or his property, or in the furtherance of the public welfare, and which necessity cannot be reasonably abated by other means.

C. Applicants for such permit shall provide the following:

1. An application in writing which states the purpose of such permit, the nature of the problem to be abated which necessitates the protection of the applicant, his property or the furtherance of the public welfare, and lists all other means which have been unsuccessfully employed to abate the problem;
2. Proof of liability insurance in the amount of one million dollars per occurrence, obtained by the applicant and naming the city as additional insured, in a form and with companies approved by the city;
3. A certificate of agreement holding the city harmless for any action by applicant under this chapter, in a form prescribed by the city.

D. Upon approval, such permit may be issued upon payment of a fee of twenty-five dollars and shall be upon conditions and limitations and for such a length of time as the chief of police may determine.

9.04.020 ~~Storage of firearms by Licensed dealers—Posting of regulations.~~

A. ~~Pursuant to California Penal Code Section 12071(b)(14), any time a licensed dealer of firearms is not open for business, the licensee shall store all firearms kept in his or her licensed place of business using one of the following methods as to each particular firearm:~~

- ~~1. Store the firearm in a secure facility that is part of, or that constitutes, the licensee's business premises;~~
- ~~2. Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearms from the premises;~~
- ~~3. Store the firearm in a locked fireproof safe or vault in the licensee's business premises.~~

B. ~~Subsection A of this section shall not apply to a licensee organized as a nonprofit public benefit or mutual benefit corporation organized pursuant to Part 2 (commencing with Section 5110) or Part 3 (commencing with Section 7110) of Division 2 of the Corporations Code, if both of the following conditions are satisfied:~~

- ~~1. The nonprofit public benefit or mutual benefit corporation obtained the dealer's license solely and exclusively to assist that corporation or local chapters of that corporation in conducting auctions or similar events at which firearms are auctioned off to fund the activities of that corporation or the local chapters of the corporation.~~
- ~~2. The firearms are not pistols, revolvers, or other firearms capable of being concealed upon the person.~~

C. ~~Upon written request from a licensee, the licensing authority may grant an exemption from compliance with the requirements of subsection A of this section if the licensee is unable to comply with those requirements because of local ordinances, covenants, lease conditions, or similar circumstances not under the control of the licensee.~~

D. ~~As used in this section, a "secure facility" means a building that meets all of the following specifications:~~

- ~~1. All perimeter doorways shall meet one of the following:~~

~~a. A windowless steel security door equipped with a deadbolt and a doorknob lock;~~

~~b. A windowed metal door that is equipped with a deadbolt and a doorknob lock. If the window has an opening of five inches or more measured in any direction, the window shall be covered with steel bars of at least one-half inch diameter or metal grating of at least nine gauge affixed to the exterior or interior of the door;~~

~~c. A metal grate that is padlocked and affixed to the licensee's premises independent of the door and doorframe.~~

~~2. All windows are covered with steel bars.~~

~~3. Heating, ventilating, air conditioning, and service openings are secured with steel bars, metal grating or an alarm system.~~

~~4. Any metal grates have spaces no larger than six inches wide measured in any direction.~~

~~5. Any metal screens have spaces no larger than six inches wide measured in any direction.~~

~~6. All steel bars shall be no further than six inches apart.~~

~~E. As used in this section, "licensed premises," "licensed place of business," "licensee's place of business," or "licensee's business premises" means the building designated in the license.~~

~~F. Any person or business establishment engaged in the business of offering for sale any instrument or device described in [Section 9.04.010](#) of this chapter shall have posted in a conspicuous place in the place of sale, a copy of this chapter and shall deliver a copy of this chapter to any purchaser of such instrument or device.~~

9.04.030. Duty to report theft or loss of firearms.

Any person who owns or possesses a firearm (as defined in [Penal Code](#) Section 16520 or as amended) shall report the theft or loss of the firearm to the Morgan Hill Police Department within forty-eight (48) hours of the time he or she knew or reasonably should have known that the firearm had been stolen or lost, whenever: (1) the person resides in the city of Morgan Hill; or (2) the theft or loss of the firearm occurs in the city of Morgan Hill.

9.04.040. Safe storage of firearms.

No person shall leave a firearm (as defined in [Penal Code](#) Section 16520 or as amended) unattended in any residence owned or controlled by that person unless the firearm is stored in a locked container, or the firearm is disabled with a trigger lock that is listed on the California Department of Justice's list of approved firearms safety devices.

9.04.050. Possession of large-capacity ammunition magazines prohibited.

A. No person may possess a large-capacity magazine in the city of Morgan Hill whether assembled or disassembled. For purposes of this section, "large-capacity magazine" means any detachable ammunition feeding device with the capacity to accept more than ten (10) rounds, but shall not be construed to include any of the following:

- 1. A feeding device that has been permanently altered so that it cannot accommodate more than ten (10) rounds; or*
- 2. A .22 caliber tubular ammunition feeding device; or*
- 3. A tubular magazine that is contained in a lever-action firearm.*

B. Any person who, prior to the effective date of this section, was legally in possession of a large-capacity magazine shall have ninety (90) days from such effective date to do either of the following without being subject to prosecution:

- 1. Remove the large-capacity magazine from the city of Morgan Hill; or*
- 2. Surrender the large-capacity magazine to the Morgan Hill Police Department for destruction; or*
- 3. Lawfully sell or transfer the large-capacity magazine in accordance with [Penal Code](#) Section 12020.*

C. This section shall not apply to the following:

- 1. Any federal, state, county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties;*
- 2. Any government officer, agent, or employee, member of the armed forces of the United States, or peace officer, to the extent that such person is otherwise authorized to possess a large-capacity magazine and does so while acting within the course and scope of his or her duties;*
- 3. A forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her duties;*
- 4. Any entity that operates an armored vehicle business pursuant to the laws of the state, and an authorized employee of such entity, while in the course and scope of*

his or her employment for purposes that pertain to the entity's armored vehicle business;

5. Any person who has been issued a license or permit by the California Department of Justice pursuant to [Penal Code](#) Sections 18900, 26500-26915, 31000, 32315, 32650, 32700-32720, or 33300, when the possession of a large-capacity magazine is in accordance with that license or permit;

6. A licensed gunsmith for purposes of maintenance, repair or modification of the large-capacity magazine;

7. Any person who finds a large-capacity magazine, if the person is not prohibited from possessing firearms or ammunition pursuant to federal or state law, and the person possesses the large-capacity magazine no longer than is reasonably necessary to deliver or transport the same to a law enforcement agency;

8. Any person lawfully in possession of a firearm that the person obtained prior to January 1, 2000, if no magazine that holds fewer than 10 rounds of ammunition is compatible with the firearm and the person possesses the large-capacity magazine solely for use with that firearm.

9. Any retired peace officer holding a valid, current Carry Concealed Weapons (CCW) permit issued pursuant to California [Penal Code](#).

~~9.04.030~~ 9.04.060- Confiscation—Authority—Conditions.

Any instrument, device or article used or possessed in violation of the provisions of this chapter is declared to be a public nuisance and may be confiscated and possessed by a police officer of the city and turned over to the chief of police under the conditions set forth in this section. If no complaint for violation of this chapter is filed within seventy-two hours of the taking, the instrument or device shall be returned to the person from whom it was taken. If a complaint for violation of this chapter is filed within seventy-two hours, the chief of police may return it to the person from whose possession it was taken upon such conditions as he deems desirable for the public welfare. If the person from whom it was taken is not convicted of a violation of this chapter, then the device or instrument shall be returned to him without any conditions. If there is a conviction and sixty days have expired since the date of conviction, the same may be destroyed by the chief of police or returned to the person from whom it was taken upon such conditions as the chief deems desirable for the public welfare.

~~9.04.040~~ 9.04.070- Violation.

It is unlawful for any person to violate or cause or permit the violation of the provisions of any section of this chapter.

SECTION 2. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 3. Effective Date; Publication. This ordinance shall take effect thirty (30) days after the date of its passage and adoption. The City Clerk is hereby directed to publish in full or summary this ordinance pursuant to §36933 of the Government Code in a newspaper of general circulation in the City of Morgan Hill.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 17TH DAY OF OCTOBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 24TH DAY OF OCTOBER 2018 AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

APPROVED:

STEVE TATE, Mayor

ATTEST:

DATE:

IRMA TORREZ, City Clerk

Attachment: Firearms Ordinance (1993 : Gun Violence Ordinance)

∞ **CERTIFICATE OF THE CITY CLERK** ∞

I, **IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA**, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 24th day of October 2018.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk

Attachment: Firearms Ordinance (1993 : Gun Violence Ordinance)



A HIGH PRICE TO PAY: THE ECONOMIC AND SOCIAL COSTS OF YOUTH GUN VIOLENCE IN SAN MATEO COUNTY

SEPTEMBER 2011



Attachment: Youth Gun Violence Report 2011 (1993 : Gun Violence Ordinance)

INTRODUCTION FROM SUPERVISOR ROSE JACOBS GIBSON

Dear Friends:

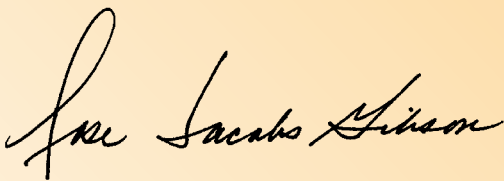
Safe streets and parks, schools free of violence, and communities where our children prosper are goals we all share. Yet each year, more than 20,000 children and young adults in the United States are killed or injured by guns in their own neighborhoods. Here in the Bay Area, youth firearm violence, often perpetrated by gang members, is on the rise, threatening the safety and security we all deserve. From the physical, economic, and social costs for the community to the psychological effects experienced by children and their families, firearm violence touches every segment of our society.

As a member of the San Mateo County Board of Supervisors, I have worked closely with law enforcement and community leaders to improve the safety of our residents through the establishment of programs like Operation Ceasefire and the East Palo Alto Crime Reduction Task Force. During my tenure as Association of Bay Area Government's (ABAG) President, we established a Youth Gun Violence Task Force charged with developing common sense approaches to keep guns out of the hands of young people and to curb youth firearm violence. During my twenty years in public service, I have come to understand that addressing youth gun violence through law enforcement efforts and community-driven prevention programs is the only way to ensure that all children in our community, regardless of their race or socio-economic background, have the opportunity to reach their full potential.

In 2010, the Silicon Valley Community Foundation provided funding to ABAG's Youth Gun Violence Task Force to conduct a youth firearm violence research project. This publication is the outcome of the concerted efforts of many government agencies, community-based organizations, and my office. I hope you find it compelling and that it inspires you to work with me to enhance our efforts to curb youth firearm violence locally and in the greater Bay Area.

My goal continues to be turning this eloquent sentiment recently expressed by a parent in one of our focus groups into reality: "How beautiful it would be, if instead of seeing a wall of graffiti, we saw a young person changed. Look, he's studying now, or going to church, or working. How great that would be..."

Sincerely,



Rose Jacobs Gibson
Supervisor
San Mateo County Board of Supervisors

San Mateo County governments and communities are committed to reducing and preventing youth firearm violence.^{1, 2, 3} In an effort to measure the true human and financial impact of youth firearm violence in San Mateo County, the county has analyzed crime, health, and cost data. With the help of community partners, the county also conducted qualitative interviews, focus groups, and surveys of residents and law enforcement in communities with pronounced rates of youth firearm violence, which include Daly City, East Palo Alto, Redwood City, and San Mateo. (See *Appendix for detailed methodology*.) This report summarizes this analysis, providing a reference for policymakers and service providers, as well as a benchmark that may be used to assess the effectiveness of future prevention efforts. The most compelling findings from our research are as follows:

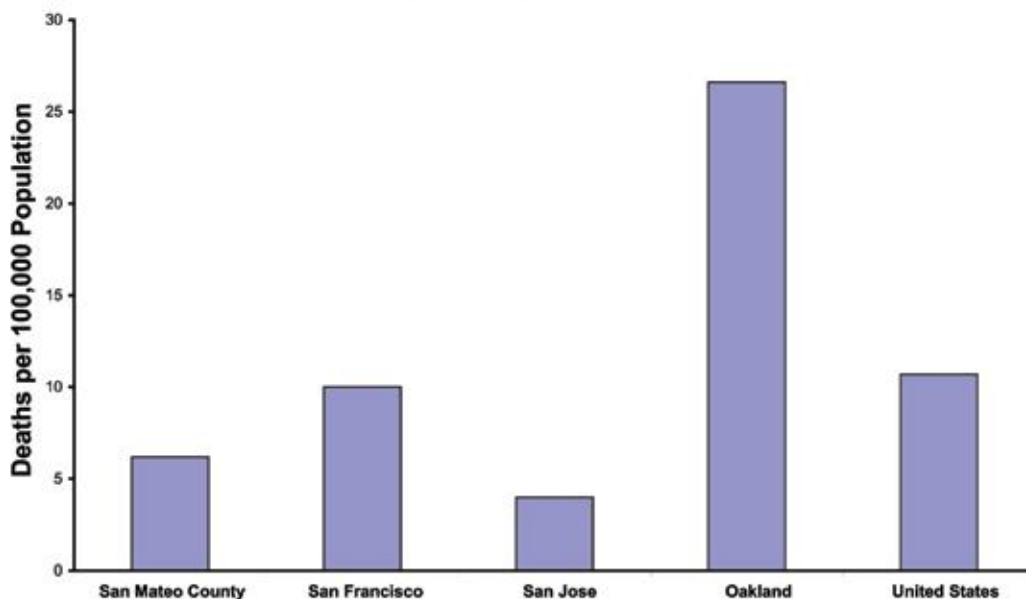
- The firearm violence mortality rate in San Mateo County is 42 percent lower than the United States, 39 percent lower than neighboring San Francisco, but 55 percent higher than San Jose.
- African American males aged 15 to 24 years are up to 18 times more likely than the overall county population and 3.5 times more likely than other San Mateo County youth to be shot and killed. The rate of non-fatal injuries among Latinos aged 15 to 24 years is 14 percent higher than that of other San Mateo County youth.
- The cities of East Palo Alto, Daly City, South San Francisco, and Redwood City comprise 38 percent of the total San Mateo County population, but disproportionately account for 57 percent of non-fatal firearm injuries and 74 percent of fatal firearm injuries.

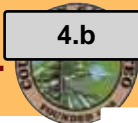
- Nonfatal and fatal injuries of San Mateo County youth from 2005-2009 will cost society an estimated \$234 million in medical care, criminal proceedings, future lost wages, disability benefits, and lost quality of life
- Eighty-one percent of adults and 56 percent of youth incarcerated* for firearm crime in San Mateo County had been previously arrested.
- Nine out of 18 (50 percent) juveniles incarcerated* and 31 of 75 (41 percent) adults incarcerated* for firearm crime are gang-affiliated.
- The County Gang Intelligence Unit reports that gangs actively recruit disadvantaged San Mateo County youth, as young as 11 years of age, in schools and afterschool programs.
- San Mateo County local governments spend an estimated \$57,000-\$856,000 per crime—depending on crime severity—investigating, prosecuting, defending, punishing, and preventing youth firearm crime.

*These figures are based on the jail and juvenile hall population for a single day in 2011. It is conceivable that these figures vary considering the transient nature of the jail population.

Countywide statistics do not tell the whole story about youth firearm crime and violence. The firearm violence mortality rate in San Mateo County is 6.2 deaths per 100,000 residents per year, 42 percent lower than the United States, 39 percent lower than San Francisco, but 55 percent higher than San Jose (*Figure 1*).

Figure 1: Rate of Violent Firearm Mortality in San Mateo County, the United States and Other Bay Area Cities 2005 - 2009

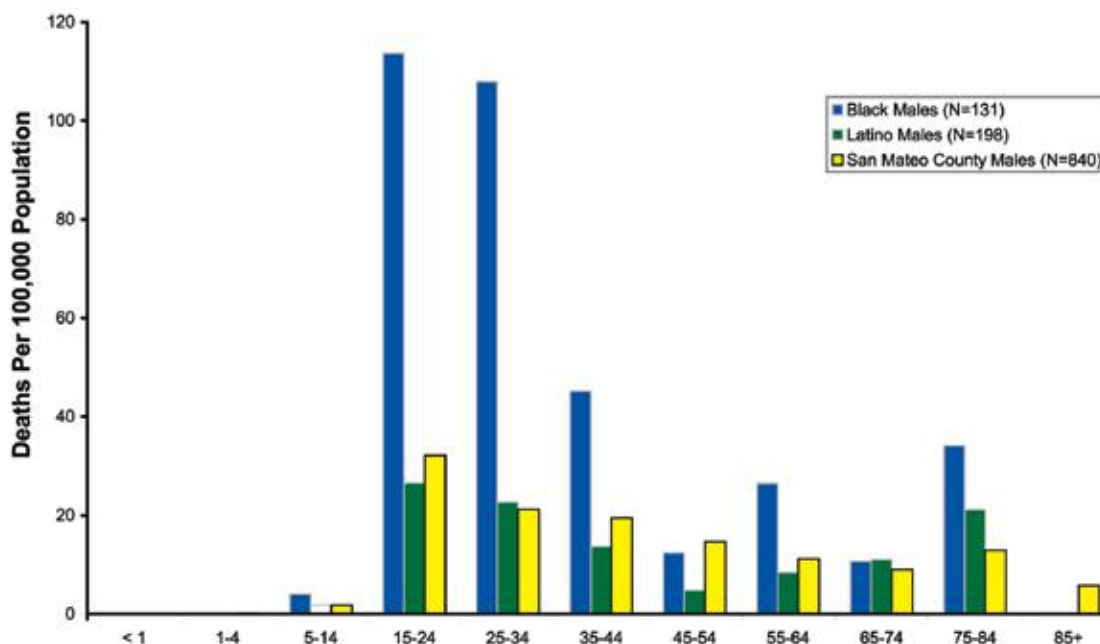




However, the countywide statistic masks the fact that certain communities and demographic groups within the county suffer a disproportionate impact from firearm crime and violence. For example, young African American males aged 15 to 24 years

are up to 18 times more likely to be shot and killed than the overall county population and up to 3.5 times more likely than other San Mateo County youth to be shot and killed (*Figure 2*).

Figure 2: Mortality Due to Firearms Among Black and Latino Males
Cumulative Unadjusted Data, San Mateo County 1990 - 2009 (N = 329)

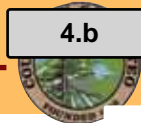


Firearm violence in San Mateo County is concentrated in the four cities of East Palo Alto, Daly City, Redwood City, and South San Francisco. Combined, these cities account for 74 percent

of fatal injuries and 57 percent of non-fatal firearm injuries, but only 38 percent of the total San Mateo County population (*Table 1*).

Table 1: Percentage of Fatal and Non-Fatal Firearm Injury and Mortality and Total San Mateo County Population by City 2005-2009

City	Percent of SMC Firearm Homicides	Percent of SMC Non-Fatal Firearm Injuries	Percent of SMC Population	Ratio of Percent of Homicides to Percent of SMC Population
Daly City	21.2%	6.7%	14.2%	1.5
East Palo Alto	25.8%	21.0 %	4.7%	5.5
Redwood City	15.2%	18.1 %	10.4%	1.5
South San Francisco	12.1%	11.0%	8.7%	1.4
All other SMC cities	25.8%	43.2%	62.0%	0.4



Incarceration and recidivism for firearm crime is also high and concentrated in select communities and demographics.

A snapshot of the 75 adults held at the county's correctional facilities for any firearm crime (ranging from possession to homicide) on a single day in 2011 reveals that 45 percent were Latino, 28 percent were African American, and 96 percent were male. Of the 18 inmates held at the juvenile facility for firearm crime on a single day in 2011, 67 percent were Latino, 22 percent were African American, and 94 percent were male. Both adults and youth charged with firearm crimes had a high recidivism rate; 81 percent of incarcerated adults had been arrested before, as compared with 56 percent for youth. Seventy-eight percent of the 18 incarcerated juveniles were from the three communities of East Palo Alto, San Mateo, and the North Fair Oaks neighborhood of Redwood City. While the City of San Mateo has relatively low rates of fatal and non-fatal firearm injuries, it has high rates of incarceration for juveniles engaging in firearm crime.

Members of communities with pronounced rates of youth firearm violence live in an environment of fear, distrust, and diminished opportunities.

Youth firearm violence was perceived to occur in the context of a community environment that is unstable, unpredictable, and chaotic. The characteristics of an unsafe community that respondents mentioned included economic deprivation, vandalism and graffiti, drug dealing, frequent interpersonal and family conflict, and gang activity. Unsafe communities were described as "lonesome" places where neighbors don't know one another or watch out for one another. Youth may lack family support as well as educational and employment opportunities, causing service providers to lament that "in this population, kids don't see themselves after high school." When faced with a lack of optimism about the future, youth may become involved in gangs and criminal activity, leading a focus group participant to comment, "If youth don't value their own lives, how can we expect them to value ours?"

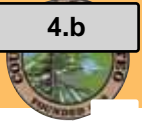
Youth firearm violence is driven by gang activity. Based on information provided by law enforcement and corrections personnel, as well as by community members, it is reasonable to conclude that gang activity is the main driver of youth firearm violence in San Mateo County. On a single day in 2011, 50 percent of juvenile inmates and 41 percent of adult inmates incarcerated and charged with a firearm crime in San Mateo County had a known gang affiliation. While gang members commit crimes in nearly all municipalities of the county and often cross city and county lines, in San Mateo County they are concentrated in the following cities: East Palo Alto, Daly City, Menlo Park, Millbrae, South San Francisco, Redwood City, San Mateo, San Bruno, Half Moon Bay, and in unincorporated areas such as the North Fair Oaks neighborhood of Redwood City. Gang culture glamorizes the use of firearms and encourages youth to gain respect and status through violence and criminal activity. Gang members "take their pictures with their guns and

text it to friends or post it on Facebook," where "kids as young as 14 years old are shown holding their guns with their 'rag and colors'." (Service Provider)

GANGS TARGET VULNERABLE YOUTH

Even youth who are reluctant to become involved with a gang may be forced to do so. According to Gang Intelligence Unit (GIU) officers, youth are often approached by gang members at school or at afterschool programs. "Youth as young as 11 years old are approached by their school friends to join the gang. Many of these youth come from broken homes; are being raised by a single parent, live in poverty, or face other family issues. Gangs capitalize on this lack of stability by offering the at-risk youth a place or group to belong. Recruiters further entice kids by offering them a chance to earn money and respect on the streets. Otherwise, gangs coerce youth. Refusing to join a gang could result in bullying, intimidation, embarrassing the youth in front of peers at school, or being accused of association with rival gangs, which can have drastic consequences." (GIU Officer).

Reprisals and revenge create a cycle of violence. A service provider described how the typical cycle of violence plays out: "If someone is playing around with the idea of being in a gang and their friend gets shot, all of a sudden it becomes easier for them to retaliate and do harm to someone else...When the shooting happened in South San Francisco, that's something I heard a lot about at Juvenile Hall. Affected youth were declaring that 'we're going to load up on guns, our neighborhood needs more guns'." Youth described being given firearms by gang members, or even family members, and being asked to take part in reprisals. One young woman recounted a story of resisting pressure to take part in revenge and telling her grandmother, "No, it ain't happening" when she was handed a gun and asked to avenge her cousin's death. Bullying may also be a contributing factor to retaliatory violence in some cases; unfortunately "there is a lack of communication and awareness [about bullying] on the part of parents and staff at school," according to service providers. A pattern of retaliation against "snitching" may be a factor in the reluctance to report firearm crimes; both parents and youth reported that fears of reprisal may keep them from informing law enforcement about firearm crimes in their communities.



Youth firearm violence negatively impacts quality of life in multiple ways.

The majority of youth and parents from affected communities who participated in surveys and focus groups believed that they or a loved one could be a victim of firearm violence in the near future. Similarly, 67 percent of youth and 57 percent of parents reported that youth firearm violence was a “very significant” or “somewhat significant” problem in their lives. Youth and parents described their sadness at losing friends and relatives to youth firearm violence, as well as being fearful when shootings happened near their homes. Others reported apathy, helplessness, and desensitization that can occur as a result of frequent exposure to violence. For example, one youth stated, “I’m immune to it now. I’ve gotten used to it. I’ve seen people die, friends die, brothers die, cousins die,” while another noted that firearm violence is “normal” in his community.

Fear of violence leads both youth and adults to lead their lives differently, especially with respect to outside play and walking around their neighborhoods. Sixty-three percent of youth and 38 percent of parents surveyed reported avoiding areas of their neighborhoods they would otherwise pass through, while parents participating in focus groups reported staying in at night and not allowing their children to walk to school or to play in local parks. The majority of youth and parents surveyed felt that youth firearm violence was an important factor in deciding where to live, though parents reported that economic considerations may force them to live in neighborhoods they consider to be unsafe.

Firearm violence has massive hidden financial costs that are difficult to measure.

Researchers have attempted to estimate total costs for fatal and non-fatal injuries in the United States. These total costs include not only criminal proceedings, lost productivity and medical care, but also the suffering and decreased quality of life experienced by victims. Such dollar estimates are necessarily inexact, but nonetheless

can be useful for decision-makers as they weigh the cumulative costs of violence against the costs of preventive measures. Values are assigned to parameters such as suffering and decreased quality of life by using benchmarks such as “pain and suffering” jury damage awards and workers’ compensation payments, as well as “Willingness to Pay” methodology.⁴



Based on these methods, each fatal injury costs society an estimated \$6.4 million (range \$3.4 to \$9.1 million), and each non-fatal injury costs society an estimated \$46,000. Using the parameters, the cost of the 36 fatal and 133 non-fatal firearm injuries to youth in San Mateo County from 2005-2009 will total \$234 million over time.

We all pay for youth firearm crime. Although youth firearm violence is concentrated in a small number of San Mateo County communities, the cost of youth firearm crime is shared by all county residents. Local government institutions spend vast public funds responding to, investigating, prosecuting, defending, preventing, and punishing youth firearm crime. Because of the concentrated nature of youth firearm violence, affected police departments must also recruit and train additional officers to investigate gangs and interact with youth. *Table 2* describes these costs and programs.

EASE OF ACCESS TO FIREARMS

Sixty-three percent of youth surveyed felt it was “very easy” or “somewhat easy” to get access to firearms, and the majority of participants in a youth focus group felt that they could get a gun “with one phone call.” Youth most commonly obtained guns by stealing, by illegally purchasing them from an individual on the black market, or “from their homes.” Respondents reported that firearms could be purchased for “as little as \$80 to \$300—depending on the size of the gun.” An intergenerational pattern of gang involvement or criminal activity may lead to youth having access to guns from family members, and being able to borrow or informally barter for guns. Respondents pointed out that getting a gun is “as easy as access to drugs.” This climate of ready gun availability led a service provider to observe that “it seems harder for adults to get legal access to guns than for kids to get illegal access.” This surprising information regarding the ease of youth access to guns is supported by data from the 2007 California Healthy Kids Survey, in which 4.8 percent of San Mateo County 7th, 9th, and 11th graders reported having brought a gun to school, a rate similar to that for the Bay Area overall (5 percent).

PROOF OF SERVICE

Case Name: *Kirk, et al. v. City of Morgan Hill, et al.*

Court of Appeal Case No.: H048745

Superior Court Case No.: 19CV346360

I, Laura Palmerin, am employed in the City of Long Beach, Los Angeles County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 180 East Ocean Boulevard, Long Beach, California 90802.

On August 25, 2021, I served a copy of the foregoing document(s) described as:
APPELLANTS' APPENDIX, VOLUME IV OF XI, as follows:

Anthony P. Schoenberg
tschoenberg@fbm.com
James Allison
jallison@fbm.com
Farella Braun + Martel, LLP
235 Montgomery St.,
17th Floor
San Francisco, CA 94104

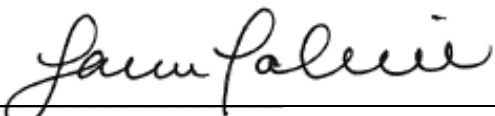
Hannah Shearer
hshearer@giffords.org
Giffords Law Center to Prevent
Gun Violence
262 Bush Street #555
San Francisco, CA 94104

Attorneys for Defendants and Respondents City of Morgan Hill, et al.

These parties were served as follows: I served a true and correct copy by electronic transmission through TrueFiling. Said transmission was reported and completed without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 25, 2021, at Long Beach, California.



Laura Palmerin
Declarant